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In re: Examine Regulatory Policies and Practices in the Water and Wastewater Industries in Florida.

On December 21, 2022, the Florida Public Service Commission (Commission) issued a Notice of Development of Rulemaking and Workshop regarding several areas impacting water and wastewater companies. On February 1, 2023, Commission staff held its workshop at which the Office of Public Counsel (OPC) participated and offered comments. Pursuant to Commission staff's invitation to file written comments on the workshop issues, the OPC is submitting the following Comments.

I. Acquisition Adjustments, Rule 25-30.0371, Florida Administrative Code (Rule)

Based on comments made at recent Agenda Conferences, staff asks several questions regarding the application of the Acquisition Adjustment Rule and if any changes are warranted to the current Rule. As the Commission is aware, the current Rule was the outcome of almost

a year-long negotiation with compromises by all stakeholders which resulted in the Rule's adoption in 2010. That process was itself the culmination of decades of litigation over acquisition adjustment policy. Given this historical effort, the Commission staff should not seek to rush the process of addressing any potential changes to the application or changes to the Rule.

Before OPC addresses the three specific questions posed by Commission staff, OPC urges the staff to consider the following points. First, if any changes to the Rule are to be considered, the changes should be based on substantial evidence of broad utility impact rather than merely anecdotal testimony of one or two utilities. Second, any changes should also be based on hard evidence that there is a customer harm, as well as utility harm, that needs to be remedied and that any proposal will have concrete quantifiable benefits for customers. Specifically, any changes to the Rule's scope or wording should be limited to water and wastewater systems that are in need of improvement, not well run systems that will merely result in handsome profits for buyers and sellers and higher rates for customers. With these points in mind, OPC provides these preliminary observations regarding the specific questions posed. We will reserve more detailed responses to the concrete proposals that may result in the initial round of comments.

A. Should criteria other than extraordinary circumstances be considered for allowing positive acquisition adjustments? If so, what criteria should be considered; how can the Commission ensure customers benefit from a positive acquisition adjustment if allowed; and how are customers protected from utilities "swapping assets"?

At the outset, OPC notes that Acquisition Adjustments are not a matter of right and should be used sparingly. The Commission's policy as codified in the Rule is to only consider acquisition adjustments when there is compelling evidence that customers will benefit.

In circumstances where a positive acquisition adjustment is sought, the potential for rate harm to the customers without any discernable benefits is great. First, the cost of the utility is increased over net book value (plant-in-service less depreciation and CIAC), which results in customers effectively paying twice for plant cost, such as depreciation and CIAC that have already been contributed to the utility through customer payments or rates. This is specifically true when

the new owner makes capital improvements to replace infrastructure that although depreciated or contributed was effectively included in the purchase price.

Second, without restraints on positive acquisition adjustments, the potential for "churning" rate base, or for utilities to "swap assets," is limitless. The potential harm to customers by allowing rates to be increased without references to book value is boundless. In monopoly situations, such as with water and wastewater utilities, market forces will not constrain the prices customers are willing to pay since they are captured (i.e. limited to the one provider). Upon approval, these positive acquisition adjustments will be passed on to customers. Without the restraint requiring proof of extraordinary circumstances by the regulator, neither the buyer, nor seller, have a market force incentive to keep rates low.

Under the current Rule, proof of "extraordinary circumstance" is the necessary threshold for a positive acquisition adjustment to be granted. In prior cases, the Commission has stated that merely fulfilling a utility's fundamental obligation as a responsible utility manager is not an extraordinary circumstance. See, Order No. 2020-0458-PAA-WS (2020), issued November 23, 2020, in Docket 20190170-WS, *In re: Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.*, and Order No. 13578, issued August 9, 1984, in Docket No. 19830568-SU, *In re: Application of P.I. Utilities Co., Inc. for a certificate to operate a sewer utility in Volusia County, Florida, and Petition of Peninsula Utilities, Inc. to substitute applicant.* OPC does not believe that the Rule language requiring proof of "extraordinary circumstances" by the buyer before he may obtain a positive acquisition adjustment should be changed. The Rule already allows the Commission to consider evidence for a positive acquisition adjustment: 1) anticipated improvements in quality of service, 2) anticipated improvements in compliance with regulatory mandates, 3) anticipated rate reductions or rate stability over a long-term period, 4) anticipated cost efficiencies, and 5) whether the purchase was an arms-length transaction. OPC believes that if a buyer wants to come forward to demonstrate a combination of these factors, the factors should be known and measurable, not phantom. OPC agrees with the proposition that any of the anticipated improvements should not

be based on the utility engaging in activities that a reasonable utility manager would be doing anyway.

OPC recognizes that the Rule currently would allow a buyer to put forth proof that may only establish that a "partial" positive acquisition adjustment is warranted. Any "partial" positive acquisition adjustment should be based on known and measurable factors. If positive acquisition adjustments are to be included in rate base, the customers should receive actual benefits. Given the potential for abuse for indiscriminate inclusion of a positive acquisition adjustment, the use should be limited and rigorous.

B. **Should acquisition adjustments be addressed only at the time of transfer, at the utility's next rate case, or at a limited time after the transfer of assets? What are the appropriate criteria and timing for addressing acquisition adjustments after the time of transfer? What conditions, if any, should be placed upon the approval of an acquisition adjustment that would be subject to review in a future rate proceeding?**

The Commission's longstanding policy is that the decision to grant an acquisition adjustment should be made at the time of transfer. This long-standing policy is consistent with Section 367.071(5), Fla. Stat., where "[t]he commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, . . ." The establishment of rate base at the time of transfer is further strengthened by the requirement in Rule 25-30.037(2)(o), F.A.C., Application for Authority to Transfer, which requires "[t]he proposed net book value of the system as of the date of the proposed transfer, and a statement setting out the reasons for the inclusion of an acquisition adjustment, if one is requested. If rate base has been established by this Commission, provide the docket and the order number. In addition, provide a schedule of all subsequent changes to rate base". The Acquisition Adjustment Rule subsection (5) further provides that "[a]ny full or partial positive acquisition adjustment, once made by the Commission pursuant to subsection (2) above, may be subsequently modified if the extraordinary circumstances do not materialize or subsequently are eliminated or change within 5 years of the date of issuance of the *order approving the transfer of assets*" (emphasis added) which also demonstrates that rate base is established at the time of transfer.

OPC believes that this long-standing Commission policy that is codified in its Rules should be maintained for several reasons. First, if there are benefits, such as improvement in the quality of service which would be the motivation for the transaction, then those benefits should exist at the time of transfer and are best evaluated at that time. Since this is closest in time to the transaction, the documentation to demonstrate known and measureable factors would likely be available. The further in time, the harder it may be to obtain the necessary documentation, especially if it was in the possession of a seller. Also the closer in time to the transaction, the better the known and measurable data available to evaluate whether the benefits actually exists.

Moreover, extraordinary circumstances either exist at the time of the transfer or they do not. The extraordinary circumstances will not magically appear six months, or a year, after the fact. While extraordinary circumstances may be demonstrated to be more pervasive than originally thought at the time of purchase, they will exist to some demonstrable level that should be known and measurable at the time of transfer to ensure they are not a phantom cost. Allowing a positive acquisition adjustment without a showing of extraordinary circumstances would absolve buyers from doing their due diligence at the time of the transaction to fully know the problems they are taking on to the best of their ability. The buyers should get inspections ahead of any transaction that is reasonably designed to reveal all potential issues. Once a reasonable inspection is completed at the time of transfer, then the buyer should know if known and measurable factors exist to establish extraordinary circumstances and should not have to "wait" until later to be established.

Second, the customers of the utility deserve to know how their rates will change due to the transfer at the time of transfer. The customers' point of entry to object to a transfer is when the transfer is before the Commission for approval, not at a future time. Deferring the approval of acquisition adjustment would prevent customers from having a full understanding of the details of the transfer and therefore deprive them of a full opportunity to contest the transfer.

C. Should the Commission's existing policy regarding negative acquisition adjustments be modified or eliminated?

As stated above, OPC notes that acquisition adjustments are not a matter of right and should be used sparingly. The Commission's policy as codified in the Rule is to only consider acquisition adjustments when there is compelling evidence that customers will benefit.

In the instance of a negative acquisition adjustment, the adjustment will be limited to 80 percent of net book value. Rule 25-30.0371(3), F.A.C. In the instance of the negative acquisition adjustment, customers will benefit assuming the new buyer uses some of the cost savings for capital improvements in the utility. In addition, customers will also experience a savings in rates with the lower rate base if the purchase price is below 80 percent. As the current Rule is structured for negative acquisition adjustments, both the utility buyer and customers benefit from the sale without incentive for utility churning rate base that causes higher rates to customers.

II. Allowed Return on Equity (ROE)

A. Should the Commission consider a time-limited ROE adder for infrastructure replacement investments?

No, the Commission should not be looking to create any ROE adder, even if time-limited. There is the potential for this type of incentive to be imported into different industries even though the same issues do not exist with infrastructure replacement as they do with the water and wastewater industry.

Moreover, utilities already have the ability to include future capital improvements up to 24 month beyond the test year on which they could earn a return. See, Section 367.081(2)2., Fla. Stat. Allowing recovery of investment and earning a return on that investment two years into the future should provide an adequate incentive to replace infrastructure as needed and in a timely fashion.

In addition, the Commission provides its leverage formula to establish an adequate ROE for utilities without them having to invest in expert witnesses to establish an ROE themselves. If the Commission believes that the equity leverage formula does not provide an incentive to invest in infrastructure or rate base then the Commission should open up a docket to have a hearing on the calculation of the equity leverage formula itself.

B. Should the Commission consider an increase to the midpoint or an expansion of the traditional ROE range?

As noted above, the Statute already has incentives to maintain utility systems. It is unclear what benefit would be created for customers from increasing the ROE range.

III. Used and Useful Adjustments (Rules 25-30.431, 25-30.432, and 25-30.4325, Florida Administrative Code)

Should the Commission consider modifications to its Used and Useful Rules to provide incentives that encourage new investment and replacement of aging infrastructure?

Under the current used and useful rules, OPC would note that most small utility systems are already 100% used and useful. Assuming any given system is already 100% used and useful, replacement of infrastructure would also likely be 100% used and useful. Thus, no meaningful change would increase the used and useful calculation of these systems. If a system is expanding for new customer growth, OPC believes that it is prudent to maintain the current rules as drafted to ensure current customers do not pay for infrastructure that does not benefit them. The Statute requires that returns are earned on "the investment of the utility in property used and useful in the public service." See, Section 367.081, Fla. Stat. As with the Acquisition Adjustment Rule, used and useful calculations were the subject of dispute in almost all water and wastewater cases particularly before the adoption of the current rule language.

IV. System Consolidation

A. How can economies of scale be maximized?

B. How can rate impacts be minimized?

C. How can the Commission improve regulatory efficiency?

D. What regulatory processes are obstacles to consolidation of systems?

There are thousands of water and wastewater companies across Florida. OPC would note that the Commission only has jurisdiction over a relatively small number of these water and wastewater companies. Thus, any regulatory changes to the Commission's processes will impact relatively few of the water and wastewater companies that may be candidates for consolidation.

OPC believes that the Acquisition Adjustment Rule as currently written provides safeguards that ensure customers benefit from transfers. If the Commission simply applies this Rule to utilities seeking acquisition adjustments, economies of scale can be maximized and rate impacts will be minimized.

OPC is unclear as to the context wherein the Commission staff is seeking input on improving regulatory efficiency. As to the question of what regulatory processes are obstacles to the consolidation of systems, OPC is unable to address this question at this time. If the utilities raise any issues under questions C and D, OPC may offer reply comments.

V. Cost Recovery Mechanisms

Should the Commission develop an annual cost recovery mechanism that would facilitate the accelerated replacement of identified water distribution and wastewater collection/transmission pipe and infrastructure that has reached the end of its useful life or has a high consequence of failure? If so, how would such a mechanism be structured?

No. The Commission lacks authority to create alternative ratemaking methods where the legislature has already occupied that field with specific and limited authority for the Commission to establish alternative ratemaking for very small utilities, and then only by rulemaking. Additionally, the agency fundamentally cannot change its longstanding policy of establishing rates pursuant to the criteria established in Section 367.081, Fla. Stat. The proposed infrastructure cost recovery mechanism ("ICRM") procedure for increasing rates and making prudence determinations of ratebase additions is not expressly authorized and would be clearly unlawful in many circumstances. No reviewing court would be able to conclude that the Commission possessed a lawful basis or a factual basis in the record that would support any explanation for changing Commission policy and Florida law by authorizing an ICRM. The index process is a creature of statute and as such cannot be misappropriated for use as an *ad hoc* rate increase mechanism.

1. An ICRM is not lawful for all water and waste water companies.

Section 367.081, Fla. Stat., provides the exclusive means for fixing and changing rates for a Class A water and/or wastewater company, except for the specifically authorized indexes and

pass-through adjustments specified in Section 367.081(4), Fla. Stat.[1] Class C water and wastewater companies can receive Staff assistance pursuant to Section 367.0814, Fla. Stat. Not all companies qualify for this streamlined relief or process. Section 367.0814(9), Fla. Stat. further provides that:

> The Commission may ***by rule*** establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in Section 367.081 (1), (2)(a), and (3).

(Emphasis added.) This alternative ratemaking authority delegated to the Commission would be limited to SARC-eligible utilities. Accordingly, significant doubt would exist about the Commission's authority to establish an alternative ratemaking mechanism.

The Commission has adopted three rules pursuant to Section 367.0814, Fla. Stat., that provide for setting rates outside of the provisions of Section 367.081(1) and (2), Fla Stat.[2] The legislature has expressly delegated to the Commission -- for very small companies only -- very limited rulemaking authority to deviate from the rate setting requirements of Section 367.081(1) and (2), Fla. Stat. Even those ratemaking procedures provide a point of entry and opportunity for hearing and require a vote by the Commission. Class A utilities could not bypass the statutorily prescribed procedures and the Florida Administrative Procedures Act ("APA") (Chapter 120) when even the Class C utilities cannot do so. The absence of specific authorization for Class A utilities to benefit from alternative ratemaking mechanisms indicates that the legislature has retained unto itself the authorization to create alternative rate-setting criteria for the larger, non-SARC eligible utilities. *Ab initio* creation of an ICRM for any Class A utility, outside of rulemaking, is a legal non-starter. The Commission's broad ratemaking authority has never been construed to override specific grants of authority and the necessarily implied limitations. In any event, the requirement that alternative mechanisms for small utilities must be by rule further evinces legislative intent that the Commission cannot create an *ad hoc* alternative to Section 367.081(1) and (2), Fla. Stat. The Commission has recognized the principle of statutory

[1]Section 367.081(1), Fla. Stat. Also, Section 367.081(6), Fla. Stat., is the file-and-suspend tariff provision that is a putative exception because rates could theoretically be initially changed without a hearing by inaction. To OPC's knowledge this has never happened.

[2]Rule 25-30.4575, F.A.C., is the operating ratio methodology rate setting mechanism that is specifically adopted under the authority of Section 367.0814(9), Fla. Stat. It applies a formula approach that ignores actual ratebase (except for a threshold qualification test) in establishing the revenue requirement for SARC-eligible utilities. Rules 25-30.456 and 25-30.457, F.A.C., also limit other alternative rate setting processes to very small SARC eligible utilities.

construction of *inclusio unis est exclusio alterius* which looks to the existence or non-existence of similar statutory provisions.[3]

Any use of the statutorily authorized index and pass-through mechanism to "piggyback" an ICRM process should also be a non-starter. There was mention at the workshop of a concept of engrafting the ICRM rate increase onto the pass-through and index rate factor filings that are reviewed and approved by Staff – but not Commissioners – coincident with an administrative review process timeline that would almost certainly prohibit or effectively preclude meaningful intervention, discovery, prudence determinations or a point of entry by affected parties (customers). At the February 1, 2023 workshop, the OPC noted that for sincere, meaningful review of the prudence of infrastructure proposals, it would certainly not be reasonable to presumptively review ICRM filings with the same level of scrutiny as the index and pass-through filings receive. In addition, the potential magnitude of such ICRM filings cannot be known. The index and pass-through time frame is not designed to reasonably allow for staff discovery in the manner that is customary in the electric and gas clause dockets. Substituting the responsibility normally undertaken in a rate case with assembly-line review of capital expenditures would be irresponsible at best and illegal at worst. At this point there is no way to estimate of the number of companies would avail themselves of an ICRM. In the electric and gas clause dockets there are four electric companies and five natural gas local distribution companies. Even that limited number of companies takes a significant amount of staff resources from March to November to review investment related filings in the Environmental, Energy Conservation, Nuclear Cost Recovery, and Storm Protection Plan clauses as well as an occasional fuel clause docket. It would have to be assumed that a significant portion of the 140 or so water and waste water utilities would avail themselves of an ICRM. It is unclear how a Commission vote would be shoehorned in during such a timeline since there has never been a need to insert Commissioner review into the index and pass-through process.

The elements of due process and protection of the customers' substantial interests are preserved in the rate cases required to be conducted pursuant to Section 367.081, Fla. Stat., and in

[3]In denying an OPC motion for appointment of conflict counsel, the Commission applied the principle in noting that "Chapters 350 and 367, Florida Statutes, are silent on the provision for appointment of counsel in the event of a perceived conflict. The fact that the appointment of counsel is addressed in other statutes, but not in those related to Public Counsel, leads to our conclusion that Florida law does not provide for alternate counsel in this situation." Order No. PSC-96-0301-FOF-WS. See also, Order No. PSC-2001-2515-FOF-EI.

the APA (Sections 120.57 and 120.569, Fla. Stat.). A proposed creation of an exemption from statutory requirements, due process requirements, and long-standing commission prudence-determination policy by way of an ICRM is an ill-conceived idea and should be rejected.

2. GRIP cannot be a precedent for the ICRM.

At the workshop, it was suggested that an ICRM could be supported by the Commission's consideration and approval of a highly fact- and law-specific rider created in 2012 to address an urgent explosion-prevention federal safety program to replace specific types of gas pipelines. The GRIP (or Gas Reliability Infrastructure Program) was approved for Florida Public Utilities and Chesapeake Gas by vote on August 14, 2012 immediately following and in conjunction with the approval of a nearly identical program for People Gas System ("PGS") for its Cast Iron/Bare Steel Pipe Replacement rider (Rider CI/BSR).[4] These standalone and highly specific riders were approved with the tacit agreement of the OPC. See transcript in Docket No. 20200139-WS EX 202, 203. (Attached to these a workshop comments as a part of Attachment A). The PGS petition was filed in 2011.[5]

The GRIP is a highly specific, unique approach to a highly specific and well documented problem. Unlike the ICRM idea, the CI/BSR and GRIP cost recovery mechanisms were a specific response to a documented imminent safety risk in the transportation of a highly combustible product that was subject to a concrete federal requirement and program (Distribution Integrity Management Program or DIMP). Attachment A. These circumstance(s) do not exist on a comprehensive basis that would support wholesale creation of a rate case alternative in a rule. It is important to note, as Staff did at the workshop that the GRIP and CI/BSR mechanisms were established with a ten-year duration limitation.[6]

In Docket No. 20200139-WS, the utility (UIF – now Sunshine Services) proposed to limit its proposed ICRM proposal to something called "linear infrastructure." No specifics as to what this catch-all generalization encompasses was provided beyond "things that are below ground."

[4]Docket No. 20110320-GU; Order No 2012-0476-TRF-GU.
[5]The publicly available information on the Commission's website indicates that the PGS petition was filed on December 14, 2011.
[6]The CI/BSR program was extended on a limited basis to address a new type of dangerous pipe that had been identified by the federal regulator (PHMSA) known as PPP or Problematic Plastic Pipe. The pipe was specifically identified by manufacturer and vintage. PGS's pipe was identified and the mechanism was authorized to cover PPP by a settlement entered into by PGS and OPC. Order No. PSC-2017-0066-AS-GU at 10-13.

Such a concept is useless as a limitation and would unlawfully delegate to the utility the unbridled discretion to set its own rates by fiat.

The CI/BSR and GRIP authorizations establish a projection and true-up, petition-based mechanism that accommodates intervention by customers, discovery and opportunity for hearing on prudence of all investments. Unless created (under dubious authority given the *inclusio unis est exclusio alterius* principle) to mimic statutorily authorized plan/clause processes like the ECRC or SPP, any ICRM tied to the index and pass-through process would seemingly dispense with these rudiments of due process and make intervention, discovery, due process and hearing opportunities extremely difficult to afford. In all likelihood, it would effectively and impermissibly shift the burden of proof to customers. To the extent that prudence were to be examined in an after-the-fact invoice presentation, the OPC submits that it would be unlawful in practice given that the projects would be in place and serving customers without having been reviewed for cost recovery. This practice could create a perverse incentive for excessive spending and rate base bloating without any rate impact checks and balances or effective prudence review. The look-back approach is *indicia* of two ICRM infirmities. If the company can present historical invoices for *post hoc* approval, it demonstrates lack of need for the mechanism since the funding and spending was achieved, and further demonstrates that additions would have been made with little to no risk of disallowance or prudence review. The second aspect is even more problematic as it would violate Sections 367.081, 120.57 and 120.569, Fla. Stat.

A crucial comparative gap between GRIP and ICRM is found in the GRIP order where the Commission said "[h]ere we are approving a similar surcharge, for a ***discreet period***, due to ***unusual circumstances***."[7] (Emphasis added.) Order No. PSC-2012-0490-TRF-GU at 11. These elements were discussed at the same agenda considering and approving both CI/BSR and GRIP.[8] ICRM proponents who might point to these temporary gas clauses as precedent have provided no evidence of unusual or urgent compelling safety analogues while also failing to provide a time

[7]The reference to a similar surcharge was to two storm surcharges for FPL and Progress Energy for discreet periods due to unanticipated storm costs (citing to Order No. PSC-2005-0937-FOF-EI and PSC-2005-0748-FOF-EI). The surcharges were time-limited, for three and two years respectively and were for the severe damage caused by four hurricanes in the 2004 season. The storm surcharges were acknowledged by the Legislature in its authorization to securitize the revenue from the surcharge(s) authorized by the Commission "separate and apart from the electric utility's base rates" under the aforementioned orders. Section 366.8260(1)(m), Fla. Stat.

[8] See Exhibit 202 at 4 (OPC counsel discussion regarding limitations and supporting the safety benefits); 8 (PGS counsel discussion regarding ten-year period; will not last forever); 9 (Commission discussion of disasters and fatalities); EX 203 at 6 (Commission acknowledgement of "priority" of the federal regulator).

limitation. Both of these elements of the GRIP (and CI/BSR) order were important to their litigation-free authorization. Similarly, the Commission emphasized in the GRIP order that "[i]t is clear that we have the authority under our broad ratemaking powers found in Sections 366.04, 366.05 and 366.06, F.S. to establish this type of surcharge to recover a discreet set of costs incurred in response to unusual urgent circumstances." Order No. PSC-2012-0490-TRF-GU at 10. (Emphasis added.) The terms "surcharge," "unusual," and "urgent" are each materially significant in GRIP and CI/BSR and do not apply to the generic nature of the ICRM being floated in the workshop. GRIP and CI/BSR are temporary mechanisms specifically designed to recover delimited and defined plant costs. No such limit is presented in the suggested ICRM concept; it would be interminable with no defined plant/assert limitation. In approving the CI/BSR, and by extension GRIP, the Commissioners expressly noted the urgency related to deaths and explosions and the exigency behind the actions of the Federal regulators. Attachment A.

The tacit agreement by the OPC on the gas company riders is significant because it was clear that the OPC had expressed an objection to the creation of a rider that it contended would invade the domain of the Legislature to determine ratemaking mechanisms that include prudence determinations. Attachment A, EX 202 at 4, 7-8. In voicing its concerns and outlining conditions necessary to avoid a hearing on the GRIP and CI/BSR riders, the OPC referred to a prior PGS rate case, Order No. PSC-2009-0411-FOF-GU ("2008 PGS Order"). Counsel for PGS acknowledged this concern and objection. *Id*. In rejecting PGS' efforts to create two riders in that rate case, the Commission expressed several concerns that are relevant here.

In rejecting the GSR (Gas System Reliability) Rider, the Commission did not explicitly address the legal objection raised by OPC.[9] However, it did decline to authorize the GSR by noting a limited proceeding could be brought for such costs, with a point of entry. 2008 PGS Order at 45. Directly relevant to ICRM, in rejecting the other rider, (Carbon Reduction Rider), the Commission highlighted a concern about the review process PGS envisioned. In commenting on the proposed short cut process -- eerily similar to the index/pass-through bootstrapping of the current ICRM suggestion -- the Commission stated that the implication was that the agency "could check the calculations, but the utility would not specifically seek Commission approval of the projects, per

[9]The OPC had argued that the Legislature had authorized two clauses for recovery of capital costs (ECCR and NCRC) and that a Commission-established rider for such costs in PGS's case would be contrary to the Legislative policy that they establish asset recovery mechanisms.

se. The ***lack of review of prudence of the projects*** gives us pause in passing the costs on [sic] the ratepayers through a clause." (Emphasis added.) PGS 2008 Order at 48. These concerns apply here. Even the act of associating or pairing the ICRM filings with the Staff's administrative processing of the statutory indexing and pass-through filings is problematic as it would create a presumption of limited or cursory review. As mentioned above, it would be difficult for the agency to provide a point of entry or meaningful prudence review. In 2008, the Commission denied the CCR rider to avoid encroaching on the legislative prerogative to create asset recovery clauses:

> We also agree with OPC and FIGU that approval of the CCR may constitute imprudent regulatory policy. ***The purpose for all existing cost recovery clauses is to allow utilities to recover costs which are volatile and which are outside the control of the utility.*** Decisions ***on when and where to expand facilities are entirely under the control of the utility.*** PGS's management, not ratepayers, should bear the cost and responsibility for decision [sic] on expansion of the Utility. We also agree with OPC that we should move cautiously in ***approving collection of capital costs outside a rate case.*** OPC notes that the Legislature has already seen fit to explicitly address other areas where capital costs have been approved for recovery outside a rate case. If expansion of gas infrastructure is necessary or desirable to meet state goals as noted by Witness Binswanger, ***it may be more appropriate for PGS to seek legislative approval first.***
>
> For the foregoing reasons, we find that PGS has not demonstrated the need for treatment of these costs outside a rate proceeding. ***Further, we find that there are insufficient safeguards built into the Carbon Reduction Rider, as proposed, to adequately protect ratepayers from imprudent expenditures.*** PGS's request is therefore denied.

(Emphasis added.) PGS 2008 Order at 48-49.

The suggested ICRM would be the exact ratemaking departure that the Commission rejected in 2008. No meaningful prudence review is contemplated under the notion of the ICRM due to the way the ICRM costs would be paired with in the pass-through and indexing time frame. No unusual or urgent circumstances exist that could arguably support a statutory departure, even if the Commission were to possess the authority to do so (which they do not).[10] Given the amount

[10]As noted above, since the Legislature only created such conventional rate case exceptions (and then only if done by rulemaking) for very small companies, that authority does not exist for all water and waste water utilities and the Commission possesses no power to create one specially for the non-SARC utilities.

of detail unavailable or mostly missing in the conceptualization, it would be entirely up to the 100+ utilities to decide when and where to replace facilities. Furthermore, given the legislative enactments creating clause recovery for assets with governing standards noted in the 2008 Order, as well as the very recent 2019 creation of the Storm Protection Plan Cost Recovery Clause,[11] the Commission should decline to encroach upon the Legislature's role in establishing the rate setting mechanism related to asset recovery.

The OPC's objections sustained by the 2008 Commission are central to the highly specific nature of the GRIP Order and they highlight the very narrow and temporally limited scope of the GRIP and CI/BSR Rider decisions. The dialogue between counsel for PGS, Chesapeake and OPC demonstrate that there was a history and an interrelatedness among the GRIP and CI/BSR cases and a direct linkage to the 2008 PGS Rider denial decisions. Attachment A. There were heavily documented legal, factual and regulatory reasons for the OPC to refrain from contesting the exceptional safety-related GRIP and CI/BSR Riders in the face of its strong 2008 opposition to the Commission-created rider. "Urgent" and "unusual" circumstances are documented in the GRIP and CI/BSR orders.[12] These circumstances do not exist in the ICRM concept floated in the workshop.

3. GBRA and SoBRA are not precedents for the ICRM.

In the 2020 UIF rate case proposing a form of ICRM, the company suggested that the Commission could look to its orders authorizing GBRA (Generation Base Rate Adjustment) and SoBRA (Solar Base Rate Adjustments). Like the GRIP and CI/BSR authorizations, these specific ratemaking mechanisms were products of negotiations and settlement. The negotiated GBRA and SoBRA provisions were formalized and embedded in comprehensive settlements with give-and-take on multiple issues. All settlements containing these mechanisms were entered with the provisions contained in Commission orders approving them in their entirety with similar language:

> ***No Party will assert*** in any proceeding before the Commission that this 2017 Second Revised and Restated Settlement Agreement or

[11]See Section 366.96, Fla. Stat., requiring the Commission to adopt rules implementing that statute. The rules govern the types of costs that may be recovered and implement the legislative proscription against double recovery. This ICRM notion has no such protection in it.

[12]The OPC does not contend that its objections control the Commission's decisions. A contested GRIP or CI/BSR order might have led to a similar outcome. However, the OPC submits that the "negotiated resolution" circumstances that are demonstrated in Attachment A, EX 202, as well as the highly specific exigent circumstances supporting the GRIP and CI/BSR ratemaking exceptions, isolate them from being used to support an ill-advised, unsubstantiated and unlawful exception to established ratemaking.

> ***any of the terms in the 2017 Second Revised and Restated Settlement Agreement shall have any precedential value***.
>
> ***
>
> It is the intent of the Parties to this 2017 Second Revised and Restated Settlement Agreement that ***the Commission's approval of all the terms and provisions of this 2017 Second Revised and Restated Settlement Agreement is an express recognition that no individual term or provision, by itself, necessarily represents a position, in isolation, of any Party … because of that Party's signature herein***.

(Emphasis added.) Order No. PSC-2017-0451-AS-EI at 57-58 (DEF 2017). By themselves, these (GBRA or SoBRA) provisions have no stand-alone precedential value and cannot be a source of support for the ICRM on that basis.[13] Beyond that infirmity, the ICRM idea has no relationship to the GBRA and SoBRA provisions. For one thing, the GBRAs had defined facilities identified, costs determined, and had identified revenue requirements. The ICRM concept appears to share none of these fundamental features. The GBRAs were highly specific to a certain asset, time-bound and all completed. The ICRM has nothing in common with these provisions.

In a similar vein, the SoBRAs have a four-year life and cost caps on the specific assets spelled out with highly specific criteria. TR 715; Order Nos. PSC-2016-0650-AS-EI (FPL), PSC-2017-0451-AS-EI (DEF) and PSC-2017-0456-S-EI (Tampa Electric). The SoBRAs were also the product of settlements with approval conditions designed to wall them off from a cottage industry of freeform ratemaking proposals like the ICRM. Just like the GBRA, the SoBRA cannot form a legal basis for an unexplainable departure from the Commission's ratemaking statutes and policies.

In sum, for the reasons expressed above, the OPC believes that the Commission should not seek to create any annual cost recovery type mechanism. The Commission possesses the tools in existing processes to address the issues. Section 367.0822, Fla. Stat., states that the "commission

[13]The limitation in the settlement agreement language does expressly at least prohibit a "Party" to the settlement from asserting any provision (such as the GBRA or SoBRA) constitutes a precedent or attributing the inclusion in the settlement to an agreement by a signatory to their agreement to such a provision on a standalone basis. This specificity does not mean that non-signatories are free to use the provisions in a way that the settling parties are prohibited from doing. In fact, non-signatories are bound by the terms of a settlement agreement if they have had the opportunity to challenge it and fail to do so, and administrative finality has attached. *Fla. Indus. Power Users Grp. v. Brown, 273 So. 3d 926,* at 929-930 *(Fla. 2019).* In any event it would be illogical to allow non-signatories to have greater rights than the signatories in this regard to pirate standalone provisions of an inter-related whole.

may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates." Pursuant to this statutory authority, the Commission has implemented Rule 25-30.445, General Information and Instructions Required of Water and Wastewater Utilities in an Application for a Limited Proceeding. This Rule sets forth the minimum filing requirements for class A and B utilities under subsection (4) and class C utilities in subsection (5). This newly-expanded Limited Proceeding Rule can facilitate the replacement of infrastructure with concurrent rate recovery. Class A & B utilities are sufficiently sophisticated to provide the required information and successfully use the Limited Proceeding Rule. Class C utilities may need additional assistance from the Commission to gather the necessary information. If the utilities raise any additional issues under this question, OPC may offer reply comments.

VI. Utility Reserve Fund (Rule 25-30.444, Florida Administrative Code)

Should the Commission consider modifications to increase use of the Utility Reserve Fund Rule?

Section 367.081(2)(c), Fla. Stat., allows the Commission, on its own motion or at the request of the utility, to authorize a utility to create a utility reserve fund for infrastructure repair and replacement for a utility for existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service, to be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The Commission implemented Rule 25-30.444, Utility Reserve Fund, which outlines the requirements for projects eligible for use under the utility reserve funds. This Rule has requirements (including reporting requirements) to ensure the funds would be used for the benefit of the customers. However, the Rule is five pages long and may be complicated for even Class A and B utilities to navigate, let alone a Class C utility, which may be why it appears that the Utility Reserve Fund has yet to be used. Similar to Limited Proceedings Rule, an outreach to these utilities regarding the use of this Utility Reserve Fund via workshops, video conference and video instruction on the Commission website to educate utilities on this Rule should improve the utilization of this provision. If the utilities raise any additional issues under this question, OPC may offer reply comments.

VII. Other Topics For Discussion

Are there any proposals for new policies or practices that participants would like to present for discussion?

OPC has no additional proposals for new policies or practices to raise at this time. If the utilities raise any additional issues under this question, OPC may offer reply comments in response to concrete proposals offered in this initial round.

Respectfully submitted,

/*s/Patricia A. Christensen*
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 0989789

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
Docket No. Undocketed

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 1st day of March 2023, to the following:

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s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel

ATTACHMENT A

Docket No. 20200139-WS
Cross-Examination
Hearing Exhibit

Exhibit No.: 23

Proffered by: Public Counsel

Short title: Docket No. 110320 - Agenda 08.14.2012

Witness(s): Deason

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110320-GU

PETITION FOR APPROVAL OF CAST IRON/BARE STEEL PIPE REPLACEMENT RIDER (RIDER CI/BSR), BY PEOPLES GAS SYSTEM.

_____/

PROCEEDINGS: COMMISSION CONFERENCE
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 14, 2012

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

CHAIRMAN BRISÉ: Moving on to Item Number 6.

MS. DRAPER: Good morning, Commissioners. Elizabeth Draper with staff.

Item Number 6 is a petition by Peoples Gas for the approval of a cast iron/bare steel pipe replacement rider. I believe the company is here to speak and so is OPC.

CHAIRMAN BRISÉ: All right. Thank you very much. I guess I would like to hear from Mr. Watson or Ms. Floyd.

MR. WATSON: Good morning, Commissioners. I scribbled out some notes last night about what to say this morning, and I would really rather say nothing at all but to indicate that I'm here, Kandi Floyd is here, Carlos Aldazabal is here, and Rick Wall is here to answer any questions that any of you might have today about the proposed cast iron/bare steel replacement rider.

And I'd prefer to answer questions because your staff has done, what I believe is made an excellent presentation in its recommendation that this rider be approved. I am going to make a few comments, because I think this is a great program, but I will try to be brief.

I would note, however, the gentleman on my right is here today, and the Office of Public Counsel intervened in this docket quite some time ago. And I doubt seriously that he's here today to support the staff's recommendation. So I, therefore, would like to ask if I might be permitted to respond to any comments Mr. Rehwinkel might make after he has made them.

CHAIRMAN BRISÉ: Okay. Mr. Rehwinkel.

MR. REHWINKEL: Thank you, Mr. Chairman and Commissioners. My name is Charles Rehwinkel on behalf of the Office of Public Counsel.

Mr. Watson is correct that we did intervene in this awhile back, and I want to commend Peoples Gas for taking -- I think going to great pains to keep us informed, communicate with us about what was going on, include us in meetings with the staff, in my opinion, even maybe when they didn't have to. So I think they do it right, and I really appreciate the way they approach regulation.

He's partly right that I'm not here entirely to support the staff's recommendation, but I don't know that the Public Counsel's Office is intending to stand in the way of either program of Peoples or FPUC. But I am here to state a fundamental objection of our office to the concept of the surcharge or rider or tracker as

these programs have been called around the state.

In Peoples' last rate case, the 2008 case, the Public Counsel's Office took the position that the creation of these mechanisms was more properly in the realm of the legislature. We take a cautious approach to whether the Commission should be creating clauses or trackers or riders of this sort, so we state our objection to that.

I will say to you, though, to the extent that language in your order addressing this issue, the PAA order, sufficiently walls off this type of program and keeps it from becoming a precedent that grows without control, you would minimize or diminish our reasons for asking for a hearing on this item. So I would just state that up front. I am not here to unequivocally state our opposition to this program. I think there are a lot of safety benefits and potentially some long-term customer benefits to what the company proposes. It's really more the mechanism that is being proposed.

And in that regard there are two items with respect to the mechanics of this that we have a concern about. What is being proposed here will have some beneficial effect on depreciation expense and O&M expense over the course of this ten-year program. It

will affect expense levels that were really considered when you set base rates for both of these companies in the recent years. Those expense levels, O&M expenses and depreciation expenses are not necessarily factored into the setting of the surcharge amount. They probably aren't at this time either readily identifiable or material. But, nevertheless, from a conceptual standpoint, when you create a mechanism like this out of base rates, your goal should be to pull out everything that is going to be considered in the setting of that surcharge out of base rates so you have a clean break there.

By the nature of this process, that break is not necessarily so clean. What would help us, again, in evaluating whether to ask for a hearing on this, and I think would resolve this for us, would be if after, say, the second year of this mechanism being in place, to ask the companies at least annually, and that would be sufficient for our purposes, to identify O&M and depreciation expense savings. And I think this will be essentially after it's in effect for two full years.

I don't know that it would be material, but certainly at that time if the company could report that that would be helpful to us. And the same remarks I am making here today would apply to FPUC with respect to

our philosophical objection to the surcharge as well as to these two expense items and the tracking mechanism. Thank you.

CHAIRMAN BRISÉ: Thank you, Mr. Rehwinkel.

I think there's a question for you from Commissioner Balbis. Okay. So you'll wait.

Mr. Watson.

MR. WATSON: With respect to Mr. Rehwinkel's last suggestion; that is, that we track whatever the O&M savings are that may result from the replacement of this aged infrastructure and report that, I assume we would do it about the same time we file our annual surveillance report, beginning after the second year the program has been in effect, Peoples is willing to do that.

He questioned whether the savings would be material. I do, as well, after having spoken with the engineering folks that know a lot more about the engineering side of this than I do. You still have to do leak surveys on all your pipe. So we would be doing, for example, leak surveys on the new replacement infrastructure the same as we do on the cast iron and bare steel pipe that is being replaced. But whatever those savings are, we are perfectly willing to capture and report those annually during the time period this

program is in effect.

MR. REHWINKEL: And if I might, Mr. Chairman, add one thing. I think that with regard to Mr. Watson's remarks, to the extent there's an intervening rate case, that obligation would cease, because then this expense impact would be evaluated and taken into effect. And with the depreciation, if there is a depreciation study, I don't know that it would be necessary after that. So I think there would be an opportunity to terminate this obligation after an intervening rate case for certain.

CHAIRMAN BRISÉ: Mr. Watson.

MR. WATSON: That is obviously acceptable, as well. With respect to the general objection to these riders in general, Mr. Rehwinkel and I have had this discussion before in the context of Peoples' last rate case, and I recall we had a rider proposed. We had two rider, actually, one of which was, I thought, a very good thing; the other one was a little iffy. And Mr. Rehwinkel made similar objections to both. The main objection was that all of this should be handled in a rate case. We could do that.

Peoples committed back in the 1990s to spend approximately $1 million a year to replace this aging infrastructure. If we were to continue along those

lines, it would take 70 years to replace this pipe that we hope to replace in ten years. There's simply no real incentive to take the limited capital expenditure budget that the company has and divert it to the replacement program as opposed to revenue producing projects that can grow the revenue of the company.

The second thing, Mr. Rehwinkel expressed some grave concerns, I recall, in his brief in the 2008 rate case about the Commission's jurisdiction to approve a rider like this. That brief, however, suggested no precedence or statutory language that suggested that was indeed the case. This Commission's ratemaking authority is extremely broad, not only in 366.06, but other sections of the Florida Statutes. You have the power to set just and reasonable rates. That's what we are doing here, but it's for a ten-year period. This won't go on and on forever. And if he really believed that there was no jurisdiction, right after he intervened he could have filed a motion to dismiss, and we could have argued that right up front before we went through all the staff discovery and the time that has passed since this petition was filed late last year.

So, anyway, we are agreeable to the conditions that Mr. Rehwinkel has proposed, and I

assume the staff would be willing to incorporate that in an order. Thank you very much.

CHAIRMAN BRISÉ: Commissioner Balbis has a question.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

And, first of all, I'd like to commend Peoples Gas for moving forward with this program. I think that on a nationwide basis, I know this Commission is focused on this issue, and there have been several disasters in San Bruno where there were eight fatalities, and Allentown where there were five fatalities, and even in the State of Florida what happened in Perry. And so I want to commend Peoples Gas for recognizing that investment in this infrastructure that will benefit the health, safety, and welfare of its customers is important, and so I want to applaud you for that.

And I appreciate the Office of Public Counsel with the recommendation for the monitoring. You know, speaking for myself, that's something that seems acceptable. Because obviously if an asset is depreciated over a certain period of time and then you are replacing it perhaps ahead of its expected life, then there should be some adjustment. So I think that

is a good solution.

I do have one question for Peoples concerning the cost of the program. With the past ten years and having replaced 200 miles of pipe for one million a year, which works out to be 20 miles per year, that cost just seems a little low. Are there other funds being used? Did this cover the total cost of it? Because you are accelerating the program albeit at a cost per mile, but are you comfortable with that amount being adequate to run the program?

MS. FLOYD: Are you referring to the $80,000 per mile that we have included?

COMMISSIONER BALBIS: Yes. Page 3 of the recommendation indicates that approximately 200 miles of cast iron pipe was replaced over a period of ten years, so about 20 miles per year at a million dollars per year. And I just want to make sure that that -- it just seems low to me. I mean, I don't have information on that, but I just want to make sure that if we do recognize it is a program that we want to move forward with, that you are not coming back to us in a year or two not having adequate funds.

MS. FLOYD: Right. And the $80,000 per mile that we have used in our filing is simply a number that we have looked at over the past several years, and I

think one thing to realize is that when you are replacing this infrastructure, Peoples is a statewide -- our infrastructure is statewide. And depending on the geographical area of the replacement, you might have higher cost per mile of main in a more nonmetropolitan area versus a higher cost, per se, down in Miami or somewhere like that.

So our actual -- our average costs that we have looked at really has been more or less due to pipeline replacement in less metropolitan areas, so where we feel like we are okay with this is that we will have annual true-ups where we can account for the different costs that might be forthcoming when we do replace this cast iron and bare steel, and we'll be able to true-up annually and reset the surcharge based on the actual costs that we have spent over the last year. So the 80,000 might be a lower number right now, but it is based on our historical replacement activities which have been in less metropolitan areas.

COMMISSIONER BALBIS: Okay. Thank you.

And, again, I want to thank Peoples and the Office of Public Counsel. I can't think of a better use of customer dollars than to protect their health and safety. So I full support staff's recommendation on this and look forward to any comments from the other

Commissioners.

CHAIRMAN BRISÉ: Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman.

I do have a brief comment, but first I would like to ask our staff if they have any response or comments to the request that Mr. Rehwinkel has made, and that the company has agreed to from our staff role perspective.

MS. DRAPER: We fully agree with the suggestions by OPC.

MS. BROWN: And we'll reflect that in the order.

COMMISSIONER EDGAR: Then, Mr. Chairman, I agree with Commissioner Balbis. I think this sounds like an excellent program. The purpose of the program is important. I'm glad that the companies in Florida are taking the initiative.

As to the OPC concern about the approach, I do understand that. I also do believe strongly that this Commission approaches these types of implementation, rate implementation decisions on a case-by-case factual basis. And my understanding of this issue is that this is an effective and efficient rate mechanism to address the need that has been identified. And I appreciate OPC working with the

company to find a way to implement it that adds additional transparency and will help make the program work better. So I am also supportive at the appropriate time.

CHAIRMAN BRISÉ: Okay. Any further comments?

Seeing none, we're in the posture to entertain a motion.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I move staff's recommendations on this item, and also to have the order reflect the recommendations from the Office of Public Counsel for the annual monitoring.

COMMISSIONER EDGAR: Second.

CHAIRMAN BRISÉ: Okay. It is moved and seconded.

Any further discussion?

Seeing none, all in favor say aye.

(Vote taken.)

CHAIRMAN BRISÉ: Okay. Thank you very much. I think we found a good resolution on this matter.

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 18th day of September , 2012.

JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732

Docket No. 20200139-WS
Cross-Examination
Hearing Exhibit

Exhibit No.: 24

Proffered by: Public Counsel

Short title: Docket No. 120036 - Agenda 08.14.2012

Witness(s): Deason

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120036-GU

JOINT PETITION FOR APPROVAL OF GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) BY FLORIDA PUBLIC UTILITIES COMPANY AND THE FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION.

_____/

PROCEEDINGS: COMMISSION CONFERENCE
ITEM NO. 7

COMMISSIONERS PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 14, 2012

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

CHAIRMAN BRISÉ: Moving forward to Item Number 7, Docket Number 120036-GU. And as soon as everyone gets settled, Mr. McNulty, you may move forward.

MR. McNULTY: Commissioners, Item 7 is a joint petition by Florida Public Utilities Company and Chesapeake Utilities Corporation for approval of their proposed gas reliability infrastructure programs, or GRIP. FPUC's proposed GRIP is addressed in Issue 1, and Chesapeake's proposed GRIP is addressed in Issue 2.

Staff has an oral modification to its recommendation on Issue 1, and several modifications to Issue 2 to correct bill impact data which we would like to identify at this time. The first such modification is Page 10, third paragraph, last sentence. Delete the word annually. Page 20 is the cite of the next modification. Second full paragraph, second sentence, replace 23 cents with 33 cents.

COMMISSIONER EDGAR: Excuse me. Could you slow down just a bit?

MR. McNULTY: Sure.

COMMISSIONER EDGAR: And may I ask has this been -- I apologize, Mr. Chairman. Was this distributed in writing?

MR. McNULTY: Yes, it was.

COMMISSIONER EDGAR: Okay. For some reason I can't put my hands on it, so I need you to move, if I may, just a little more slowly as I'm flipping the pages.

MR. McNULTY: Not a problem. And I have a copy, if you would like.

COMMISSIONER EDGAR: If you have an extra one, I will take it. And I apologize that I can't put my hands on it right this very second.

MR. McNULTY: Not a problem, Commissioner. I'll go slow and we'll get it right.

COMMISSIONER EDGAR: Thank you.

Thank you, Mr. McNulty.

MR. McNULTY: Sure.

COMMISSIONER EDGAR: I have Page 10, so if you could start again on Page 20.

MR. McNULTY: Okay. Page 20, the second full paragraph, second sentence. Replace 23 cents with 33 cents.

Okay. Then turning to the next page, Page 21, the modifications exist here completely in Table 2-3 in the fourth and fifth columns, the first and second lines. The first such change is in the fourth column, first row, replace 23 cents with 33 cents.

In the fifth column, first row, replace 9 percent with 1.3 percent.

Then in the fourth column, second row, replace 68 cents with 97 cents.

And, finally, in the fifth column, second row, replace 2.7 percent with 3.8 percent.

And staff will note that these inadvertent errors that we have just identified do not modify staff's recommendation in any way. And, as you know, parties are here to speak.

CHAIRMAN BRISÉ: All right. Thank you.

Ms. Keating.

MS. KEATING: Good morning, Mr. Chairman, Commissioners. Beth Keating with the Gunster firm here on behalf of FPUC and Chesapeake. As you are well aware, the programs have been put forward by FPUC and Chesapeake share some distinct similarities with the program that you just took up. And as such, I suppose there are some benefits of coming second in line today.

But we echo many of Peoples' comments today, particularly with regard to the efforts of your staff. Your staff has conducted a very thorough analysis and put forth a thoughtful recommendation and we are in full support of that.

With me today is Ms. Cheryl Martin, Director

of Regulatory Affairs for FPUC, and a number of other company representatives that are fully prepared to address any questions that you may have. And to the extent that Mr. Rehwinkel also has comments with regard to our programs, we would like the opportunity to respond, as well.

CHAIRMAN BRISÉ: Sure.

Mr. Rehwinkel.

MR. REHWINKEL: Mr. Chairman, Charles Rehwinkel on behalf of the Office of Public Counsel.

I have nothing different to say about FPUC's working with our office, as well as our comments on the authority for the rider, if you will, as well as the modifications that we would offer to resolve our technical issues with the program.

CHAIRMAN BRISÉ: Thank you.

Ms. Keating.

MS. KEATING: Like Peoples, we fully believe that you have complete authority to approve the program that is before you today. The companies are, however, comfortable with the reporting requirement that OPC has suggested and would be willing to move forward with that.

CHAIRMAN BRISÉ: Commissioner Graham.

COMMISSIONER GRAHAM: Move staff

recommendations with the same modification as we did on Item Number 6.

COMMISSIONER BROWN: Second.

CHAIRMAN BRISÉ: Okay. It's been moved and seconded.

Any further comments?

Commissioner Edgar.

COMMISSIONER EDGAR: Just an additional brief comment, Mr. Chairman. Thank you.

I do believe that we have the clear statutory authority to move forward in this way, but as I commented earlier, I do recognize that the general or fundamental concern that OPC expressed on the earlier item. And, likewise, I do believe that we will continue to look at these type of mechanisms on a case-by-case basis. And I would also like to just comment that the purpose of the programs from the last item and this and for all three companies, I know, is a priority of PHMSA and PHMSA's Administrator, Cynthia Quarterman. I think we have all had the opportunity to have significant additional education on these issues, and I'm, once again, pleased that Florida companies are taking the initiative, and I support the motion.

CHAIRMAN BRISÉ: All right. It has been moved and seconded. All in favor say aye?

(Vote taken.)

CHAIRMAN BRISÉ: All right. Let the record reflect that Item Number 7 has been approved by the Commission.

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 18th day of September, 2012.

JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732