

Investor Owned Utilities  
Written Comments to FPSC Workshop

In reference to the Staff Workshop held on February 1, 2023 concerning Regulatory Practices in Water and Wastewater Industries in Florida, I offer the following comments for consideration.

I am currently the Vice President of Investor Owned Utilities for the following utilities, hereafter referenced as “**Collective Utilities**” regulated by the Florida Public Service Commission:

Country Walk Utilities, Inc.  
Florida Community Waters Systems, Inc.  
HC Waterworks, Inc.  
LP Waterworks, Inc.  
Merritt Island Utility Company  
North Florida Community Water Systems, Inc.  
Royal Waterworks, Inc.  
SGI Wastewater Services, Inc.

Collectively, these FPSC regulated investor owned utilities provide services to approximately 7,600 customers in Florida.

Collective Utilities submits the following written comments to the FPSC workshop.

Acquisition Adjustments

Rule 25-30.0371, F.A.C. was intended to incentivize acquisitions of troubled aged utilities by more experienced and financial wherewithal companies. This rule was intended to promote consolidation of water and wastewater utilities in the State of Florida. Which was to promote economies of scale, investment in failing infrastructure, better managerial and financial oversight. However, it was also intended to protect customer from excessive purchase prices with no added benefit. The industry collective agrees there should be an added benefit to customer. However, this added benefit is sometimes difficult to quantify or prove at the time of acquisition.

Historically, the FPS has approved positive acquisition adjustments (AA) for the gas industry but few if any for the water and wastewater industry. The FPSC has also approved conditional positive AA upon a showing for the extenuating circumstances. This has not occurred in the water industry. It should be noted that it is not an “all or nothing” condition. There could be showing of a partial approval of a portion of a positive AA. Whether it be increased managerial improvement, better customer service, ability to attract capital, or decrease in operational expenses due to economies of scale is the difficult quantification. The decrease in operational expenses could be a proven empirical showing, the remaining circumstances may be more difficult to prove. At a minimum the decrease in operating expenses should be taken in consideration and the positive AA may be allowed in a subsequent proceeding.

Water and wastewater utilities are tasked with self-reporting in Florida, with minimal oversight by regulating agencies. With the exception of on-site inspections, data requests, or managerial audit, there is little to no day to day investigations. The same is true with day to day customer interactions, with the exception of formally filed complaints. This has been and still is the process in the industry. In the past, the water and wastewater utilities have not retained proper record keeping of these items. Experience has shown that utilities have not followed the industry required requirements of self-reporting or record keeping. This at times has been extremely difficult to prove.

Once an experienced utility management has acquired a utility, it becomes self evident this has occurred in the past. Again, sometimes it becomes difficult to provide empirical proof since it simply doesn't exist. Often, when an experienced utility follows the FDEP rules on providing Precautionary Boil Water Notices (PBWN) to customers on low pressure or no water events, customers state that they never received one under the old owners. The customers state that this means the new owners are not doing a good job, when in fact the new owner is simply following the FDEP rules that were never previously followed. Again, this is difficult to provide empirical evidence.

As shown in the NRRI analysis, previously provided some states include an ROE adder to provide an incentive to acquisitions to encourage acquisitions.

Negative AA occurs when the acquiring utility negotiates a purchase price below net book value (NBV). If this occurs, the acquiring utility may be penalized by an approval of a negative AA. This will occur without the acquiring utility "requesting" the negative AA. In comparison when a utility that purchased a utility at a higher than NBV, it is required to request the positive AA at the time of purchase. In imposing this negative AA, this is a disincentive to negotiate the best possible price. Lower purchase prices can encourage additional needed capital improvements to the utility's infrastructure.

A negative AA doesn't represent the actual NBV of the utility as previously determined by the FPSC. In contract, if a positive AA isn't requested at the time of transfer, the FPSC will not consider any future positive AA in any future rate proceeding.

### Used and Useful

These are the most antiquated and most restrictive rules of the FPSC. When they were approved and established in the 1980's and 1990's they served a purpose for developer owned utilities. That situation does not exist today. These developer owned utilities have subsequently been acquired by utilities and/or counties.

Pursuant to Section 367.111, F.S. a regulated utility is required to provide service within its existing approved service area. There are provisions where a utility may delete territory or not provide service if it is not economically feasible. However, when an acquiring utility purchases

a utility with either service lines extending to existing customers and outlying parcels, or if the water and/or wastewater plant was sized for a larger community, they are required by Florida Statute to continue this service to the existing customers. As a result of the outdated FPSC rule there is no incentive to repair or replace the infrastructure that is providing services to these existing customers through no fault of the acquiring utility.

Consideration should be given to the last time the Used and Useful (U&U) determination was considered and approved, as well as, the transfer of ownership – or possible number of times the utility has been transferred.

For example, if the U&U was determined more than 5 – 7 years ago, then this should be considered. If the anticipated growth in customers has also not occurred in this same time period, consideration should be given to if the service territory is built out. If the utility has been purchased after this period, or has been purchased multiple times; this also should be considered.

Again this is a major disincentive to make necessary investments in infrastructure. Acquiring utilities should not be penalized through no fault of their own through a reduction in investment for used and useful. It should be noted that when the Commission determines net book value in a transfer, it does not apply a non used and useful adjustment. Thus, the acquiring utilities anticipates and expects a return on the approved net book value with no offsetting used and useful reductions.

The electric and natural gas industries have similar legislative mandates, however are not micro-managed similar to the water and wastewater industry. The Collective Utilities is unaware of any other state in the US that has this similar regulation. Typically, if the infrastructure is being used to provide services to existing customers then it is considered used and useful.

Section 366.041(1), Florida Statutes states:

In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings.

In the current economic situation, a FPSC regulated utility is not going to make unnecessary investment in infrastructure without assured recovery.

These rules should either be repealed in their entirety or be extensively revised to incentivize needed capital improvements to infrastructure. Consideration should be given as to the prudence of investments to service existing customers throughout the entire utility's approved service territory to meet local, state, and federal standards and regulations.

In the example given at the workshop, the water mains in the Sunny Hills development were installed by the developer sometime in the 1980's. This utility has changed ownership numerous times since then. The used and useful percentage on the water lines was previously determined to be ten percent (10%) in a previous rate case several years ago. The vast majority of the water mains are being used to provide water service to existing customers throughout the utility's approved service territory. However, when a main breaks or needs to be replaced due to its condition or age, the utility is only allowed to earn a return on 10% of its investment. Thus, if the cost was \$1,000,000 for a main replacement the utility would only earn a return on \$100,000. Assuming a rate of return of 7.84% (current leverage formula at 100% equity), the utility would be allowed to earn \$7,840 or 0.00784% on a million dollar investment. This is a tremendous disincentive to make this investment.

### Return on Equity

As stated at the workshop, the water and wastewater industry is the most riskiest of all regulated utilities, as well as the most capital intensive. Historically, the return on equity for the water and wastewater industry has been lower than the electric and/or gas industries. Thus, it is more difficult to attract capital or investors in the water and wastewater industry.

The Commission should consider comparisons to other regulated utilities in the other industries. A consideration should also be made to increasing the midpoint or expanding the traditional ROE range. Further, reductions to ROE should not be made if the utility has made the necessary investments to improve the quality of service.

ROE "adders" may also be considered to incentivize both acquisitions and/or necessary infrastructure investments. As previously addressed, used and useful adjustment should not be made to any replacements of existing failing infrastructure.

### System Consolidation

Consolidation of utilities should be encouraged. Consolidation should be utilized to take advantage of economies of scale and cost reductions. Also the approval of the consolidation of accounting and bookkeeping should be made at the time of consolidation to take advantage of cost savings. This eliminates the need to file a subsequent rate proceeding while improving Commission efficiency.

Rate Consolidation should be allowed and approved at the time utilities are consolidated. This provides benefits to the customer base as a whole as well as to the utility. It may also eliminate the need to file additional rate cases, as the rate case expense is passed onto the

customers. As long as the utility is not overearning, a revenue neutral rate restructuring for consolidated rates should be approved at the time of consolidation.

Respectfully submitted,

Troy Rendell  
Vice President  
Investor Owned Utilities