

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of rulemaking to amend Rule 25-30.0371, F.A.C., pertaining to Acquisition Adjustments for water and wastewater utilities. | DOCKET NO. 100338-WS
ORDER NO. PSC-10-0587-NOR-WS
ISSUED: September 23, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule No. 25-30.0371, Florida Administrative Code, relating to acquisition adjustments.

The attached Notice of Rulemaking will appear in the October 1, 2010 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at a time and place to be announced in a future notice.

Written requests for hearing and written comments or suggestions on the rule must be received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than October 22, 2010.

By ORDER of the Florida Public Service Commission this 23rd day of September, 2010.



ANN COLE
Commission Clerk

(SEAL)

CM

DOCUMENT NUMBER-DATE

07974 SEP 23 2010

FPSC-COMMISSION CLERK

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

Rule No.: RULE TITLE

25-30.0371: Acquisition Adjustments

PURPOSE AND EFFECT: The proposed rule amendments are intended to eliminate some of the excessive complex language, and to modify the amortization schedule for negative acquisitions for water and wastewater utilities. The main substantive revisions to the rule affect the treatment of negative acquisition adjustments. The proposed changes are designed to give more of the benefit of the negative acquisition adjustment to the ratepayers by increasing the amortization period of the acquisition adjustment, especially for those cases in which the systems are purchased at a significant discount. Docket No. 100338-WS.

SUMMARY: The proposed rule amendments separate cases involving negative acquisitions adjustments in water and wastewater into two groups--those in which the difference between purchase price and net book value is greater than 50 percent, and those in which the difference is 50 percent or less. If the purchase price is 50 percent or less of net book value, half of the negative acquisition adjustment is amortized over seven years, and half over the remaining life of the assets purchased. This amortization provides a greater sharing with customers and puts downward pressure on rate base.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The proposed rule changes would affect any company that acquires a water and wastewater system for less than net book value. Any ordered negative acquisition adjustment would flow through accounts thereby reducing rates over a longer period of time. Small businesses that purchase a system for less than net book value could be affected by the proposed rule changes. There would be benefits to the Commission from clarifying and streamlining the rule language.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 367.121(1)(f), FS

LAW IMPLEMENTED: 367.071(5), 367.081(2)(a), 367.121(1)(a), FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard

Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6770. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cindy Miller, Senior Attorney, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6082, cmiller@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-30.0371 Acquisition Adjustments.

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

(2) Positive Acquisition Adjustments. A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any entity that believes a full or partial positive acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, ~~and~~ anticipated cost efficiencies, ~~and whether the purchase was made as part of an arms-length transaction.~~ Amortization of a positive acquisition adjustment shall be pursuant to subsection (4)(a) below.

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

~~(a) Contested. Any entity that believes a full or partial negative acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. Under no~~

~~circumstance, however, shall the purchaser be required to record on its books more than 70 percent of a negative acquisition adjustment. In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as the anticipated retirement of the acquired assets and the condition of the assets acquired.~~

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

(4) Amortization Period.

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

(b) The appropriate period over which to amortize a Commission approved negative acquisition adjustment pursuant to (3) above, shall be determined as follows:

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

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

(5) Subsequent Modification. Any full or partial positive acquisition adjustment, once made by the Commission pursuant to (2) ~~or (3)(a)~~ above, may be subsequently modified if the

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extraordinary circumstances do not materialize or subsequently are eliminated or changed within 5 ~~five~~ years of the date of issuance of the order approving the transfer of assets.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Jo Ann Chase, Office of Economic Regulation, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 14, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 36, No. 16, April 23, 2010.