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Public Service Commission

September 23, 2010

COMMISSION  
CLERK

10 SEP 23 PM 2:17

RECEIVED-FPSC

Mr. Scott Boyd, Executive Director  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

RE: Docket No. 100338-WS - Rule No. 25-30.0371

Dear Mr. ~~Boyd~~ <sup>Scott</sup>:

Enclosed are the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to this rule, please do not hesitate to call me.

Sincerely,

Cindy Miller  
Associate General Counsel

Enclosures

cc: Office of Commission Clerk  
30-0371 JAPC Letter.cm.doc

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10 SEP 23 PM 2:17  
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FPSC-COUNSEL

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 proof of extraordinary circumstances. Any entity that believes a  
9 full or partial positive acquisition adjustment should be made has the burden to prove the  
10 existence of extraordinary circumstances. In determining whether extraordinary circumstances  
11 have been demonstrated, the Commission shall consider evidence provided to the Commission  
12 such as anticipated improvements in quality of service, anticipated improvements in  
13 compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-  
14 term period, and anticipated cost efficiencies, and whether the purchase was made as part of  
15 an arms-length transaction. Amortization of a positive acquisition adjustment shall be pursuant  
16 to subsection (4)(a) below.

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

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

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

8           (b) ~~Uncontested. If the purchase price is less than 80 percent of net book value, then~~  
9 ~~the amount of the difference in excess of 20 percent of net book value shall be recognized for~~  
10 ~~ratemaking purposes as a negative acquisition adjustment. The negative acquisition adjustment~~  
11 ~~shall not be recorded on the books for ratemaking purposes or used for any earnings review~~  
12 ~~unless the purchaser files for a rate increase pursuant to Section 367.081(2), 367.0814,~~  
13 ~~367.0817 or 367.0822, F.S., that will be effective during the amortization period. The negative~~  
14 ~~acquisition adjustment shall be amortized over a 5-year period from the date of issuance of the~~  
15 ~~order approving the transfer of assets.~~

16           (4) Amortization Period.

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

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

24           1. If the purchase price is greater than 50 percent of net book value, the negative  
25 acquisition adjustment shall be amortized over a 7-year period from the date of issuance of the

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

1 order approving the transfer of assets. In this case, the negative acquisition adjustment shall  
2 not be recorded on the books for ratemaking purposes or used for any earnings review unless  
3 the purchaser files for a rate increase pursuant to Sections 367.081(2), 367.0814, 367.0817 or  
4 367.0822, F.S., that will be effective during the amortization period.

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

10 (5) Subsequent Modification. Any full or partial positive acquisition adjustment, once  
11 made by the Commission pursuant to (2) ~~or (3)(a)~~ above, may be subsequently modified if the  
12 extraordinary circumstances do not materialize or subsequently are eliminated or changed  
13 within 5 ~~five~~ years of the date of issuance of the order approving the transfer of assets.

14 Specific Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.071(5),  
15 367.081(2)(a), 367.121(1)(a), (b) FS. History—New 8-4-02, Amended \_\_\_\_\_.

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17 Rule 30-0371.cm.doc  
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## 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](mailto: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 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



STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

The proposed changes are designed to give more of the benefit of a 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. In April, 2009, a case came before the Commission involving the sale of a relatively new utility at a large discount. There was a situation where there was not be as great a need to encourage the purchase of a utility. Thus, these revisions are aimed at balancing the goal of encouraging acquisition with the goal of allowing ratepayers to share in the benefit of a negative acquisition adjustment.

STATEMENT ON FEDERAL STANDARDS

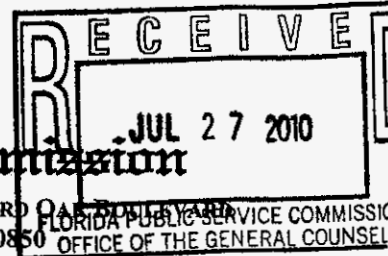
There is no federal standard on the same subject.

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD PALM BLVD. BY ABERNATHY  
TALLAHASSEE, FLORIDA 32399-0850 FLORIDA PUBLIC SERVICE COMMISSION  
OFFICE OF THE GENERAL COUNSEL



-M-E-M-O-R-A-N-D-U-M-

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**DATE:** July 26, 2010  
**TO:** Office of General Counsel (Miller)  
**FROM:** Division of Economic Regulation (Hewitt) *K da CBH CRB*  
**RE:** Proposed Amendments to Rule 25-30.0371, Acquisition Adjustments, F.A.C.

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### DETAILED DESCRIPTION OF THE PROPOSED RULE AMENDMENTS

#### *1. Why are the rule amendments being proposed?*

The rule language for acquisition adjustments is complex. The proposed rule amendments are intended to eliminate some of the excessively complex language and provide the Commission the ability to modify the amortization schedule for negative acquisition adjustments in cases where extraordinary circumstances can be proven. The proposed rule amendments would not affect how positive acquisition adjustments are treated.

#### *2. What does the rule do and how does it accomplish the goal?*

The acquisition adjustments rule defines an acquisition adjustment to be the difference between the purchase price of a utility system and its net book value of the utility assets. The rule sets forth the accounting treatment of a system sale with an acquisition adjustment.

Under the current rule provisions, a negative acquisition adjustment is not included in rate base unless there is proof of extraordinary circumstances or where the purchase price is less than 80 percent of net book value. In determining whether extraordinary circumstances have been demonstrated, the Commission must consider evidence provided such as anticipated retirement of the acquired assets and the condition of the assets acquired. The purchaser shall not be required to record on its books more than 70 percent of a negative acquisition adjustment. The negative acquisition adjustment is amortized over a 5-year period.

### IMPACT ON THE PSC

#### *Incremental costs*

There should be no incremental costs for the Commission.

#### *Incremental benefits*

There would be benefits from clarifying and streamlining the rule language. There could potentially be less workload for the commission staff.

WHO BESIDES THE PSC WILL BE AFFECTED BY ADOPTION OF THE PROPOSED AMENDMENTS

*Utilities/Regulated Companies*

Any water or wastewater utility regulated by the Commission could be affected if it acquires the assets of another utility system assets at a price different than book value. There were 179 certificated water and wastewater companies regulated by the Commission as of June 30, 2010. An unknown number of utilities may acquire the assets of another utility system at a price different than book value. Historically, there have been few cases in which a positive or negative acquisition adjustment has been recognized for ratemaking purposes.

*Customers*

Customers could be affected if their utility is acquired at a price different than book value, and the purchaser files for a rate increase during the amortization period.

*Outside business and local governments*

Small businesses that are regulated by the Commission could be affected if they purchase the assets of a utility system at a price different than book value. Small business utility customers could be affected if their utility is acquired at a price different than book value, and the purchaser files for a rate increase during the amortization period.

HOW ARE THE PARTIES ABOVE AFFECTED BY THE ADOPTION OF THE PROPOSED AMENDMENTS

*Estimated transactional costs to individuals and entities*

*Utilities*

Companies that purchase a system for less than net book value could be affected by the proposed rule changes. When the purchase price is greater than 50 percent of net book value, the negative acquisition adjustment would be amortized over a 7-year period. If the purchase price is 50 percent of net book value or less, the negative acquisition adjustment would be amortized as follows: (i) 50 percent of the negative acquisition adjustment would be amortized over 7 years; and (ii) 50 percent of the negative acquisition adjustment would be amortized over the remaining life of the assets. It would take longer for the negative acquisition adjustment in rate base to flow through the accounts.

*Customers*

Customers could be affected if the acquiring utility has a negative acquisition adjustment and files for a rate case during the amortization period. In a rate case, rates could be lower under the proposed amortization methodology than they would be if the five year amortized period in the current rule is used.

Memorandum to General Counsel  
July 23, 2010  
Page 3 of 3

*Outside businesses including specifically small businesses*

Outside businesses, including small businesses, would not be affected by the proposed rule amendments.

*Local governments*

Local governments would have no transactional costs from the rule changes unless they are a customer of an acquiring utility.

ANY OTHER PERTINENT COMMENTS REGARDING THE APPLICATION OF THE PROPOSED RULE AMENDMENTS

No other pertinent comments are germane to the proposed rule amendments.

CH:kb

cc: Tim Devlin  
Chuck Hill