

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Proposed amendment of Rule 25-30.0371, F.A.C.,
Acquisition Adjustments.

Docket No.: 20240022-WS

Filed: April 3, 2024

CITIZENS' PETITION FOR A HEARING ON PROPOSED RULE 25-30.0371, F.A.C.

Pursuant to Section 120.54(3)(c), Florida Statutes, the Citizens of Florida ("Citizens"), through the Office of the Public Counsel ("OPC") file this request for a hearing on Proposed Rule 25-30.0371, Acquisition Adjustments, as contained in Order No. PSC-2024-0066-NOR-WS, issued on March 13, 2024. In support of this request, the Citizens state as follows:

1. On March 5, 2024, at an Agenda Conference (meeting) convened to consider, among other matters, proposing adoption of the above-styled Proposed Rule, the Florida Public Service Commission ("Commission") heard comments from its Staff, the OPC and counsels for water and wastewater utilities regarding proposed amendments to Rule 25-30.0371, Florida Administrative Code, ("F.A.C.").
2. At the meeting, the OPC made comments regarding proposed subsection (2), and subsection (3) summarized below:

First, section 2, lines 7 through 9 on page 16, would allow a 3 year extension of filing for approval of the acquisition adjustment for good cause. The Commission's current policy grants or denies an acquisition adjustment at the time of transfer, which is when the information from the seller and buyer is most readily available. Further, the current timing allows for customers to know the potential bill impact from any acquisition adjustment when they could affect the potential transfer. OPC requested that the Commission continue its current practice of only determining the approval or denial of an acquisition adjustment at the time of transfer.

Second, section 3 (a) sets out the criteria for approval of a partial or full acquisition adjustment for a non-viable utility. OPC is concerned that there is no criteria for a cumulative present value of the revenue requirement (CPVRR) analysis or other form of objective type of economic analysis that would demonstrate the cost savings. This type of economic analysis is necessary to establish the cost savings expected and is an objective criteria that the commission can use as the basis for granting or denying a partial or full acquisition adjustment.

OPC's objections were raised at the Agenda Conference and were not adopted by the Commission in the Proposed Rule.

3. By Order No. PSC-2024-0066-NOR-WS, the Commission issued its Notice of Adoption of Rule 25-30.0371, F.A.C., in accordance with Section 120.54(3)(a)1. Citizens object to this Proposed Rule to the extent it does not include the proposed deletion in subsection (2) and clarifying language in subsection 3(a) as shown in Attachment A.

4. Pursuant to Section 120.54(3)(c), Florida Statutes, Citizens request a public hearing so that the Commission can consider the language proposed by Citizens herein or similar language that provides protections for customers for the rationale described above.

Because the Commission considered, and then rejected the modifications discussed by OPC at the Agenda Conference, OPC's concerns are unabated, that customers will be exposed to paying rates on a higher rate base which is greater than book value and is greater than actual circumstance can justify at the time of transfer.

5. Citizens submit that the language for subsection (3)(a) cannot fulfil the stated intent within the rule as currently proposed. The proposed language in subsection (3)(a) allows for a utility to request a positive acquisition adjustment if the purchase was made in an arms-length transaction and that the customers of the acquired utility will benefit from the acquisition. While the proposed language would have the Commission consider cost impacts, cost efficiencies, and capital cost impact

amongst other non-economic considerations, the lack of any economic analysis requirement undermines the Commission's ability to determine if there is a true "benefit" for customers.

6. It is important to note, that at this time, two long-standing customer protections in the form of this Acquisition Adjustment Rule and the Parent Debt Adjustment Rule are under simultaneous attack. The proposed changes would result in the rollback of protections that could cost water and wastewater customers hundreds of thousands of dollars, by artificially inflating customers' bills for the additional cost of the positive acquisition without adding any value to their troubled systems. For example, some of the requested Acquisition Adjustments presented to the Commission are so inflated that to pass these costs on to customers could result in customer's financial inability to pay their bills thereby financially jeopardizing these smaller, beleaguered systems, which is contrary to the stated purpose of the Proposed Rule change. The absence of compelling arguments for stripping current and future customers of either of these long afforded protections is troubling, as they are not being driven by any statutory changes, which is normally where such drastic changes originate. These proposed changes to the Rule could result in the direct transfer of dollars from Florida's customers to the utilities that serve them, in exchange for zero value if no economic evaluation is required.

7. As an economic regulatory agency, to justify granting a full or partial positive acquisition adjustment, the Commission should require an economic analysis of the costs impacts and whether they are offset by cost efficiencies in making such a determination. To be effective, the balancing of costs versus efficiencies should be expressed in the rule. See, Order No. 15490, 85 FPSC 312, issued December 23, 1985 in Docket No. 850116-TL. (Attachment B). There, the Commission lamented that there "appears to be some inconsistency between our intent and the plain language of the Rule."

Citizens seek to avoid this circumstance in future proceedings and submit that the language in Attachment A (or similar) would cure this potential problem.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 3rd day of April, 2024

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Attachment A

Public Counsel's Suggested Changes to Proposed Rule 25-30.0371, Acquisition Adjustment

(2) Petition. A utility that acquires another utility may petition the Commission to establish an acquisition adjustment under either subsection (3) or subsection (4) of this rule to include some or all of a positive acquisition adjustment in the acquired utility's rate base. A utility may seek approval of a positive acquisition adjustment at the time the utility seeks approval to transfer the certificate of authorization. ~~or anytime within 3 years of the issuance date of the Commission order approving the transfer of the certificate of authorization. The utility may request an extension of the 3-year period, which must include a statement of good cause. The petition for a positive acquisition adjustment may be made as a separate filing or as part of a rate proceeding.~~

(3) Positive Acquisition Adjustments for Non-Viable Utility.

(a) A full or partial positive acquisition adjustment will be allowed if it is demonstrated that the acquired utility meets the definition of non-viable utility under paragraph (1)(e) of this rule; that the purchase was made as part of an arms-length transaction; and that customers from the acquired utility will benefit from the acquisition. **The acquiring utility will provide a cumulative present value of the revenue requirements (CPVRR) analysis or equivalent economic analysis over a 5-year period from the date of acquisition. If the CPVRR does not result in a positive customer benefit over the 5-year period, in determining whether the acquired utility customers benefit and to allow a full or partial acquisition adjustment,** the Commission will consider the following factors:

1. Anticipated improvements in quality of service;
2. Anticipated improvements in compliance with water or wastewater regulatory requirements;
3. Anticipated impacts on the cost of providing service over the next 5 years from the date of acquisition;
4. Anticipated cost efficiencies, including any economies of scale;
5. Ability to attract capital at reasonable cost; and
6. The professional and experienced managerial, financial, technical, and operational resources of the acquiring utility.