

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 21, 2025

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Dose, Sandy, Sunshine, Crawford) *JSC*
Division of Accounting and Finance (Bardin, Buys, Byrne, Ferrer, Przygocki,
Sewards, York) *ALM*
Division of Economics (Bethea, Bruce, Hudson) *EJD*
Division of Engineering (Smith II) *TB*

RE: Docket No. 20250038-WS – Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

Docket No. 20250043-WS – Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

Docket No. 20250047-WS – Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

Docket No. 20250052-WS – Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company.

AGENDA: 06/03/25 – Regular Agenda – Motion to Dismiss – Oral Argument Requested – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay (20250038-WS)
Fay (20250043-WS)
Fay (20250047-WS)
Clark (20250052-WS)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Date: May 21, 2025

Case Background

Pursuant to Rule 25-30.0371, Florida Administrative Code (F.A.C.), a positive acquisition adjustment may occur when the purchase price of a utility is greater than the net book value of the acquired utility's assets. If approved, a positive acquisition adjustment increases rate base. Rule 25-30.0371, F.A.C., was amended on June 17, 2024. The previous version of the Rule required a showing of extraordinary circumstances to be entitled to a positive acquisition adjustment, and utilities requested the acquisition adjustment at the time of transfer. By contrast, the amended version of the rule provides a list of factors that the Commission shall consider in determining whether a positive acquisition adjustment is warranted. The amended version of the rule also allows utilities to seek approval of the acquisition adjustment at either the time of transfer or at anytime within 3 years of the Commission order approving the transfer of the certificate of authorization. While the prior version of Rule 25-30.0371, F.A.C., was still effective, Central States Water Resources-Florida Utility Operating Company, LLC (CSWR or Utility) requested and was denied positive acquisition adjustments for three utilities that CSWR acquired.

In Docket No. 20210133-SU, CSWR acquired the North Peninsula Utilities Corporation wastewater system (North Peninsula) and included a request for a positive acquisition adjustment at the time of its transfer to CSWR. The Commission approved the transfer but denied the positive acquisition adjustment by Order No. PSC-2022-0116-PAA-SU. The proposed agency action (PAA) Order provided all parties notice that the decision to deny the positive acquisition adjustment would become final and effective upon issuance of a Consummating Order unless a hearing was requested. After no petition for a formal proceeding was filed by any substantially affected person, Consummating Order PSC-2022-0137-CO-SU issued on April 11, 2022, making Order No. PSC-2022-0116-PAA-SU final and effective.

In Docket No. 20210093-WU, CSWR acquired the Aquarina Utilities, Inc. water and wastewater systems (Aquinara) and included a request for a positive acquisition adjustment at the time of its transfer to CSWR. The Commission approved the transfer but denied the positive acquisition adjustment by Order No. PSC-2022-0115-PAA-WS which provided all parties notice that the decision to deny the positive acquisition adjustment would become final and effective upon issuance of a Consummating Order unless a hearing was requested. After no petition for a formal proceeding was filed by any substantially affected person, Consummating Order PSC-2022-0133-CO-WS issued on April 8, 2022, making Order No. PSC-2022-0115-PAA-WS final and effective.

In Docket 20210095-WU, CSWR acquired the Sunshine Utilities of Central Florida, Inc. water systems (Sunshine) and included a request for a positive acquisition adjustment at the time of its transfer to CSWR. The Commission approved the transfer but denied the positive acquisition adjustment by Order No. PSC-2022-0120-PAA-WU. The PAA Order provided all parties notice that the decision to deny the positive acquisition adjustment would become final and effective upon issuance of a Consummating Order unless a hearing was requested. After no petition for a formal hearing was filed by any substantially affected person, Consummating Order PSC-2022-0136-CO-WU issued on April 11, 2022, making Order No. PSC-2022-0120-PAA-WU final and effective.

Docket Nos. 20250038-WS, 20250043-WS, 20250047-WS, 20250052-WS

Date: May 21, 2025

Between March 6, 2025 and March 18, 2025, CSWR filed three petitions requesting positive acquisition adjustments relating to its 2022 acquisitions of North Peninsula, Aquarina, and Sunshine under the amended version of Rule 25-30.0371, F.A.C. These requests were assigned Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS, respectively. None of the three petitions referenced the Commission's previous denial of CSWR's request for positive acquisition adjustments at the time of the 2022 transfers, but instead listed information required under the amended rule, such as planned infrastructure additions and maintenance needed to improve the utilities' quality of service or compliance with environmental regulations.

On March 20, 2025, CSWR filed a letter requesting approval of a test year for a rate increase and rate consolidation and Docket No. 20250052-WS was opened. Per the letter approving CSWR's test year, the Utility was expected to file its minimum filing requirements (MFRs) no later than May 23, 2025;¹ however, on May 19, 2025, CSWR filed a letter requesting a two-week extension to file its MFRs no later than June 6, 2025.²

On April 17, 2025, the Office of Public Counsel (OPC) filed a Motion to Dismiss with Prejudice or Alternative Motion for Summary Final Order and to Hold Docket No. 20250052-WS in Abeyance (Motion). In its Motion to Dismiss, OPC argues that the doctrine of administrative finality precludes CSWR from obtaining a positive acquisition adjustment on each of its utilities that were previously denied a positive acquisition adjustment by the Commission at the time of transfer. In its Alternative Motion for Summary Final Order, OPC contends that there is no issue as to any material fact and that the Commission should therefore enter a final judgment denying the acquisition adjustments. In its Motion for Abeyance, OPC requests that the Commission hold CSWR's pending rate case in abeyance until the issue of the requests for positive acquisition adjustments is resolved.

On April 24, 2025, CSWR filed its Response in Opposition to Citizens' Motion to Dismiss with Prejudice or Alternative Motion for Summary Final Order and to Hold Docket No. 20250052-WS in Abeyance (Response). In its Response, CSWR contends that administrative finality did not attach to the previous acquisition adjustment denials, that there are changed circumstances that warrant a positive acquisition adjustment in the instant cases, and that the requested positive acquisition adjustments are in the public interest. Concurrent with its Response, CSWR filed a Request for Oral Argument on OPC's Motion.

Staff's recommendation addresses CSWR's request for oral argument, and the appropriate disposition of OPC's Motion to dismiss CSWR's petitions for acquisition adjustment and request to hold CSWR's rate case in abeyance. The Commission has jurisdiction pursuant to Sections 367.071, 367.081, and 367.121, Florida Statutes (F.S.).

¹ Document No. 02687-2025.

² Document No. 03694-2025.

Discussion of Issues

Issue 1: Should CSWR's Request for Oral Argument on Citizens' Motion to Dismiss with Prejudice or Alternative Motion for Summary Final Order and to Hold Docket No. 20250052-WS in Abeyance be granted?

Recommendation: No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and rule on the Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends that 5 minutes per party is sufficient. (Dose)

Staff Analysis:

Law

Rule 25-22.0022(1), F.A.C., allows a party to request oral argument before the Commission for any dispositive motion by filing a separate written pleading filed concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

CSWR's Position

CSWR argues that because of the unique legal issues involved, oral argument may aid the Commission in understanding and evaluating the issues to be decided and would allow the Commission to ask questions of the parties. CSWR requests ten minutes of oral argument per party.

OPC's Position

OPC has not responded to CSWR's Request for Oral Argument.

Conclusion

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide OPC's Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends 5 minutes per party as sufficient.

Issue 2: Should OPC's Motion to Dismiss with Prejudice or Alternative Motion for Summary Final Order be granted?

Recommendation: Staff recommends that OPC's Motion to Dismiss should be granted in part and denied in part. Dismissal is appropriate and should be granted, however, the Motion to Dismiss should not be granted with prejudice. Administrative finality has attached to the prior denials of CSWR's requested acquisition adjustments and CSWR has not demonstrated a significant change in circumstances or that it is in the public interest to reverse the Commission's prior denials. Furthermore, CSWR is improperly seeking retroactive application of Rule 25-30.0371, F.A.C. However, CSWR should be allowed the opportunity to cure the defect in its petition to demonstrate either a change of circumstances or that reversing the prior denials is in the public interest. Therefore, the motion should not be granted with prejudice. If the Commission approves staff's recommendation to grant OPC's Motion to Dismiss, then OPC's Alternative Motion for Summary Final Order would become moot. If, however, the Commission denies OPC's Motion to Dismiss, staff recommends that the Commission deny OPC's Alternative Motion for Summary Final Order. (Dose)

Staff Analysis:

Law

In the seminal case of *Pecples Gas Systems, Inc. v. Mason*, the Florida Supreme Court held:

[O]rders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein.

187 So. 2d 335, 339 (Fla. 1966). While administrative finality generally applies to final orders, finality does not attach "when there has been a significant change of circumstances or there is a demonstrated public interest." *Delray Medical Center, Inc., v. State Agency for Health Care Administration*, 5 So. 3d 26, 29 (Fla. 4th DCA 2009).

When an administrative rule is revised, retroactive application of the new rule is generally prohibited. *Envtl. Trust v. Dept. of Env'tl. Prot.*, 714 So. 2d 493, 500 (Fla. 1st DCA 1998). However, "retroactive application of a rule may be proper if the rule merely clarifies or explains a previous rule." *Id.* A revised rule "is presumed to operate prospectively in the absence of express language to the contrary." *Jordan v. Dept. of Prof. Reg.*, 522 So. 2d 450, 453 (Fla. 1st DCA 1988).

Res judicata and administrative finality both prevent relitigation, but they differ in scope. Res judicata, a common law doctrine, applies to court judgments and bars relitigation of the same claim between the same parties. Administrative finality, on the other hand, applies to administrative agency decisions. *See Delray* at 29. The Florida Supreme Court has recognized that the legal principles of res judicata do not neatly fit within the scope of administrative proceedings, because the actions of administrative agencies are usually concerned with deciding

issues according to a public interest that often changes with shifting circumstances and passage of time. *Id.*, citing *Peples Gas Sys., Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966).

Standard of Review

A motion to dismiss raises as a question of law the sufficiency of the facts alleged to state a cause of action.³ In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition still fails to state a cause of action for which relief may be granted.⁴ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.⁵ A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.⁶

To evaluate a motion to dismiss, all allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.⁷ The “[d]ismissal of a petition shall, at least once, be without prejudice to petitioner’s filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.”⁸

Section 120.57(1)(h), F.S., provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that (1) no genuine issue as to any material fact exists, and (2) the moving party is entitled as a matter of law to the entry of a final summary order. The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists concerning the material facts.

OPC’s Motion to Dismiss or Alternative Motion for Summary Final Order

In its Motion to Dismiss, OPC argues that administrative finality has attached to the prior denials of CSWR’s positive acquisition adjustments and that CSWR cannot reapply for the same. OPC contends that CSWR failed to demonstrate the applicability of the exceptions to administrative finality, of a significant change in circumstances or a demonstrated public interest. (OPC Motion 5) Specifically, OPC claims that the only change in circumstance from CSWR’s previous petitions is the amendment to the acquisition adjustment rule, and that the amended rule does not have retroactive application. (OPC Motion 4-5) Consequently, OPC believes that administrative finality has attached to CSWR’s requests for positive acquisition adjustments and that the new petitions should be dismissed. (OPC Motion 4-5)

³ *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

⁴ *Id.* at 350.

⁵ *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2nd DCA 1960).

⁶ *Barbado v. Green and Murphy, P.A.*, 758 So. 2d 1173 (Fla. 4th DCA 2000).

⁷ See, e.g. *Ralph v. City of Daytona Beach*, 471 So. 2d 1, 2 (Fla. 1983); *Orlando Sports Stadium, Inc. v. State of Florida ex rel. Powell*, 262 So. 2d 881, 883 (Fla. 1972); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

⁸ Section 120.569(2)(c), F.S.

In its Alternative Motion for Summary Final Order, OPC asks the Commission to enter final judgment denying the acquisition adjustments. OPC contends that administrative finality attached because the acquisition adjustments were all previously denied and that Consummating Orders were issued on each denial. (OPC Motion 5) Further, OPC argues that there are no changes in circumstances beyond the change in the current rule and that the rule does not apply retroactively. (OPC Motion 5) OPC thus claims that there is no genuine issue as to any material fact, and that OPC is thus entitled as a matter of law to entry of a final order denying the acquisition adjustments. (OPC Motion 5)

CSWR's Response

In its Response, CSWR rejects OPC's contentions primarily based on the argument that administrative finality did not attach to the denials of the acquisition adjustments it requested in the three transfers at issue. CSWR argues that administrative finality does not attach because rather than asking the Commission to second-guess its earlier denial of the acquisition adjustments, CSWR is instead presenting the Commission with a new application involving different facts and applying a different law. CSWR cites to Commission precedent wherein the Commission allowed OPC's requests for negative acquisition adjustments where the same negative acquisition adjustments were previously denied.⁹ (CSWR Response 4-6) CSWR contends that OPC is changing its position from those previous cases in which OPC argued that administrative finality did not attach to previously denied acquisition adjustments. (CSWR Response 6)

CSWR goes on to make numerous arguments in its response premised on the absence of administrative finality. Those arguments are addressed herein.

First, CSWR argues that it is not asking the Commission to reconsider its prior decisions under the prior version of the rule. Instead of seeking reconsideration in which the Commission would second-guess its prior denial of acquisition adjustments, CSWR contends that it has timely filed a new petition under the new version of the rule. (CSWR Response 9-10) CSWR claims that while OPC refers to administrative finality, OPC is really arguing *res judicata* to prohibit CSWR from requesting acquisition adjustments a second time. (CSWR Response 10)

Second, CSWR claims that the facts and circumstances have changed since the time of the transfers for all three systems for which a positive acquisition adjustment is requested. Specifically, CSWR claims that in the three years since the purchases, it has learned significant facts about all three systems that had not yet occurred or were not known at the time of the transfers in 2022, such as the extreme level of deterioration of wastewater treatment facilities, the work needed to come into environmental compliance, and the former owner's insolvency and how that impacted the operation of the system. (CSWR Response 11-12) CSWR asserts that

⁹ Order No. PSC-93-1675-FOF-WS, issued November 18, 1993, in Docket No. 920148-WS, *In re: Application for a Rate Increase in Pasco County by Jasmine Lakes Utilities Corp.* (Commission relied on public interest to grant OPC's request for a negative acquisition adjustment despite having previously denied the same); Order No. PSC-01-1554-FOF-WU, issued July 27, 2001, in Docket No. 991437-WU, *In re: Application for increase in water rates in Orange County by Wedgfield Utilities, Inc.* (Commission denied Motion for Summary Final Order and allowed OPC the opportunity to demonstrate a change of circumstances to overcome the prior denial of the requested negative acquisition adjustment).

these new facts and changed conditions demonstrate that administrative finality cannot apply to the denied acquisition adjustments for these systems. (CSWR Response 11-12)

Third, CSWR argues that revisions to the acquisition adjustment rule since the transfer of the systems constitute changed circumstances that preclude the application of administrative finality. In support, CSWR cites *Delray* which held that the repeal of an administrative rule constituted changed circumstances such that administrative finality did not apply to a hospital's second application for a certificate of need. (CSWR Response 12-13) CSWR argues that just as need was evaluated differently in the second application in *Delray*, so acquisition adjustments should now be evaluated differently under the amended rule. (CSWR Response 13)

Fourth, CSWR contends that no person has taken any action in reliance on the Commission's prior denials of the requested acquisition adjustments. CSWR states that a key element to administrative finality is that parties or the public have taken action in reliance on the prior decision and that no such action is present for any of its previously denied acquisition adjustments. (CSWR Response 13-14)

Fifth, CSWR states that an acquisition adjustment is a decision relating to ratemaking, which is continuous and never final. CSWR cites to Rule 25-30.371, F.A.C., which states that a petition for a positive acquisition adjustment is a request "to include some or all of a positive acquisition adjustment in the acquired utility's rate base." (CSWR Response 14) CSWR asserts that since acquisition adjustments are related to ratemaking, whether to grant or deny an acquisition adjustment is not an issue capable of finality and CSWR is not precluded from future petitions for acquisition adjustments. (CSWR Response 14-15)

Sixth, CSWR contends that the public interest favors considering the petitions on their merits as the purpose of the amended rule is to encourage consolidation and acquisition of failing water and wastewater systems. CSWR claims that under the prior version of the Rule, no positive acquisition adjustment was ever granted thereby limiting the acquisition and rehabilitation of failing systems and harming customers of those systems. (CSWR Response 15-16)

Lastly, CSWR asserts that it is not applying the new version of the Rule retroactively. Rather, CSWR claims it is making new petitions based on new facts and cost and revenue projections rather than a single event that occurred before the new rule became effective. (CSWR Response 16) CSWR contends that the amended rule allows for petitions for acquisition adjustments to be filed within three years of the transfer order and that this new Rule recognizes that facts relating to the condition of the transferred systems and the impact of the transfer on customers take time to become fully developed. (CSWR Response 16) Rather than applying the new Rule to completed events, CSWR claims that its application applies the current procedural standards to new petitions properly brought before the Commission. (CSWR Response 17-19)

Staff Analysis

I. Administrative Finality

Staff recommends that the Commission find that administrative finality has attached to CSWR's previously denied positive acquisition adjustments and that the instant petitions should therefore

be dismissed; however, CSWR should be allowed the opportunity to conduct discovery to demonstrate either a change of circumstances or that reversal of the prior denials is in the public interest and so prejudice should not attach. The Commission's decision to deny the positive acquisition adjustments at the time of transfer issued as proposed agency action. As no request for hearing was made, the Commission's decisions were consummated, becoming final and effective agency action. To overcome administrative finality, CSWR must show either a significant change of circumstances or that it is in the public interest to overrule the prior denials. *Delray*, 5 So. 3d at 29. CSWR has failed to demonstrate either a significant change of circumstance or that reversing the Commission's prior denial is in the public interest.

1. Significant Change of Circumstances

In the instant petitions, CSWR cites to a number of facts about each system that it contends were not known at the time of the transfer. However, staff does not believe that these constitute changed circumstances sufficient to disturb the administrative finality that has attached to the transfer orders. Each of the transfer orders recounts operational and regulatory non-compliance issues CSWR knew of at the time of acquisition. While CSWR identified several improvements it intended to implement in an effort to rectify these issues, the Commission found that CSWR did not demonstrate extraordinary circumstances in support of its requested positive acquisition adjustment at the time of transfer. While the Commission did not find the Utility's anticipated improvements to justify extraordinary circumstances sufficient to warrant the requested positive acquisition adjustment, it noted that improvements may be considered for prudence and cost recovery in a future rate proceeding. In the three years since CSWR has owned and operated the utilities, it may have identified further details regarding the operational issues for each utility, or better quantified the costs needed to bring each utility into operational and regulatory compliance. However, this does not constitute a sufficient "change in circumstances."

CSWR cites to the *Delray* decision for the proposition that a revision to a rule constitutes changed circumstances sufficient to overcome administrative finality. The decision in *Delray* dealt with the repeal of an administrative rule. In *Delray*, the administrative law judge also relied on additional significant changes in circumstances for the medical facility in question which were sufficient to overcome administrative finality.¹⁰ No such changed circumstances exist for the instant petitions and so *Delray* is inapplicable to this case.

¹⁰ *Delray Medical Center, Inc., v. State Agency for Health Care Administration*, 5 So. 3d 26, 30-31 (Fla. 4th DCA 2009) (finding changed circumstances included the operating and financial position of a medical center, population growth in southwestern Palm Beach county, the explosion of residential construction activity in the geographic area to be served by the proposed hospital, the growing and unpredictable traffic congestion in the area due to rapid population growth, the increase in patients whose conditions did not qualify for inpatient admission, but who were not in a condition to be discharged, the special needs of the elderly that were not adequately served because of emergency room overcrowding, the support of Palm Beach Fire Rescue and the Sheriff's Office for the proposed hospital, the hospital's proposal for a focused geriatric program that was not part of the original application, and the 2004 and 2005 hurricanes which exposed the vulnerability of the local health care system in responding to the medical needs of a large population at times of natural disaster).

2. Public Interest

CSWR claims that no person has taken any action in reliance on the Commission's prior denials of the acquisition adjustments and that the public interest favors consideration of the instant petitions on their merits. Staff disagrees with both of these assertions. Customers of North Peninsula, Aquarina, and Sunshine have been paying rates since the acquisitions that do not account for the requested acquisition adjustments and so these customers have relied on the prior denials since the time the transfers became effective. Rather than being in the *public* interest, undoing the prior denials and allowing an acquisition adjustment now would only be in the interest of the Utility because it would allow the Utility to recover costs from customers that were previously denied.

3. Finality of Ratemaking

CSWR contends that an acquisition adjustment is a decision relating to ratemaking, which is never truly capable of finality. In support it cites to *Sunshine Utilities v. Florida Public Service Commission*, 577 So. 2d 663 (Fla. 1st DCA 1991), noting that the court held the Commission could go back four years later to correct an order containing an erroneous assumption, and requiring the utility to make a refund to customers. However, CSWR is not alleging that the prior transfer orders were erroneous and require correction; rather, the Utility contends that the Commission should entertain new requests for acquisition adjustments under the amended rule. Therefore, *Sunshine* does not appear applicable because the Commission correctly applied the prior acquisition adjustment rule.

Additionally, CSWR's assertion that acquisition adjustments are related to ratemaking and therefore can never be final does not comport with the acquisition adjustment rule in its amended or prior form. Rather than being a subject of ratemaking, acquisition adjustments are a function of a purchase that goes to establishing net book value of a utility. Under the old rule, the Commission required a company to request an acquisition adjustment at the time of the transfer of the water or wastewater certificate. The acquisition adjustment was therefore a one-time request and not subject to subsequent requests in a rate case, limited proceeding, or other petition. While expanding the timeframe during which a utility may request an acquisition adjustment, the amended rule still limits utilities to requesting within three years of the order authorizing the transfer of the certificate. Under either, there is a temporal limit in which the utility may request an acquisition adjustment and CSWR is therefore incorrect in its assertion that acquisition adjustment decisions can never be final.

CSWR cites to two Commission cases for the proposition that acquisition adjustments can be requested multiple times. Both cases cited predate the implementation of Rule 25-30.0371, F.A.C.¹¹ However, in both, the Commission relied on a finding of extraordinary circumstances to determine whether an acquisition adjustment was warranted. In both instances, which involved OPC making a subsequent request for a negative acquisition adjustment, the cited cases still relied on changed circumstances or public interest for the Commission to reverse course.

¹¹ Rule 25-30.0371, F.A.C., took effect on August 4, 2002.

CSWR first cites to Order No. PSC-93-1675-FOF-WS,¹² by which the Commission granted OPC's request for a negative acquisition adjustment after previously denying it. By Order No. 23728, the Commission found no extraordinary circumstances to warrant a negative acquisition adjustment in the transfer of Jasmine Lakes Services, Inc. to Jasmine Lakes Utilities Corporation (JLUC).¹³ In JLUC's subsequent rate case in Docket No. 920148-WS, the Commission granted OPC's request for a negative acquisition adjustment despite having previously denied the same. In its decision to allow the subsequent request for a negative acquisition adjustment, the Commission relied on public interest, finding it "patently unfair and unjust to the customers of this utility, for the investors to receive a return on that portion of the original purchase price that was less than rate base."¹⁴ As discussed above, there is no such compelling public interest to allow CSWR's instant petitions for positive acquisition adjustments.

The second case CSWR cites to is Docket No. 991437-WS in which the Commission allowed OPC's request for a negative acquisition adjustment after previously denying OPC's request in the transfer docket. By Order No. PSC-98-1092-FOF-WS, the Commission granted a transfer and amendments of water and wastewater certificates to Wedgefield Utilities, Inc. (Wedgefield).¹⁵ Although OPC requested a negative acquisition adjustment at the time of transfer, the Commission denied OPC's request finding no extraordinary circumstances to warrant the negative acquisition adjustment.¹⁶ In Wedgefield's subsequent rate case, OPC again requested a negative acquisition adjustment. Wedgefield filed a Motion for Summary Final Order claiming that the negative acquisition adjustment was decided and that OPC could not relitigate the issue. By Order No. PSC-00-2388-AS-WU, the Commission denied Wedgefield's Motion for Summary Final Order and instead allowed OPC time "to establish through its discovery a change in circumstances sufficient to overcome [the Commission's] previous decision" denying the negative acquisition adjustment.¹⁷ Wedgefield subsequently filed a renewed Motion for Summary Final Order and was again denied, and OPC was allowed to go forward at hearing to argue for a negative acquisition adjustment.¹⁸ In denying Wedgefield's motions for summary final order, the Commission allowed OPC the opportunity to demonstrate a change of circumstances to overcome the prior denial of the requested negative acquisition adjustment. Furthermore, the Commission ultimately approved a settlement agreement in Docket

¹² Order No. PSC-93-1675-FOF-WS, issued November 18, 1993, in Docket No. 920148-WS, *In re: Application for a Rate Increase in Pasco County by Jasmine Lakes Utilities Corp.*

¹³ Order No. 23728, issued November 7, 1990, in Docket No. 900291-WS, *In re: Application for transfer of Certificates Nos. 110-W and 83-S from Jasmine Lakes Services, Inc. to Jasmine Lakes Utilities Corporation in Pasco Co.*

¹⁴ Order No. PSC-93-1675-FOF-WS at 12.

¹⁵ Order No. PSC-98-1092-FOF-WS, issued August 12, 1998, in Docket No. 960235-WS, *In re: Application for transfer of Certificate Nos. 404-W and 341-S in Orange County from Econ Utilities Corporation to Wedgefield Utilities, Inc.*; Docket No. 960283-WS, *In re: Application for amendment of Certificates Nos. 404-W and 341-S in Orange County by Wedgefield Utilities, Inc.* (Commissioner Deason dissenting as to the denial of the negative acquisition adjustment).

¹⁶ *Id.* at 22.

¹⁷ Order No. PSC-00-2388-AS-WU at 7, issued on December 13, 2000, in Docket No. 991437-WU, *In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc.*

¹⁸ Order No. PSC-01-1554-FOF-WU, issued July 27, 2001, in Docket No. 991437-WU, *In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc.*

991437-WU between Wedgefield and OPC that made the interim rates permanent without addressing OPC's requested negative acquisition adjustment.¹⁹

Contrary to CSWR's position, these cases do not stand for the proposition that "an acquisition adjustment can be requested multiple times, and the Commission has agreed." Rather, these cases demonstrate that to disturb any decision of the Commission to which administrative finality has attached – including the denial of a positive acquisition adjustment – an appropriate change in circumstances or public interest reason must be demonstrated. As discussed above, CSWR has failed to demonstrate a significant change of circumstances sufficient to overcome the prior denials of the three requested positive acquisition adjustments.

4. Res Judicata

CSWR's assertion that OPC is essentially arguing res judicata rather than administrative finality is without merit. Res judicata is a judicial concept that bars relitigation of the same claim between the same parties. However, OPC's argument is focused on the factors relevant to administrative finality, namely, whether there are changed circumstances warranting reconsideration of the denied acquisition adjustments or if an acquisition adjustment is in the public interest. Therefore, CSWR's claim that OPC is arguing res judicata is without merit and irrelevant.

5. Dismissal Without Prejudice

While staff recommends granting OPC's Motion to Dismiss, staff further recommends not granting the Motion with prejudice. CSWR has failed to demonstrate either a significant change in circumstances or that reversing the prior denials of its acquisition adjustment requests is in the public interest. Therefore, dismissal is appropriate. However, pursuant to Section 120.569(2)(c), F.S., dismissal should be without prejudice at least once to allow a party time to cure the defect in its petition. CSWR should be afforded the opportunity to cure the defects in its petition, if possible, and so OPC's Motion to Dismiss should be granted without prejudice.

II. Retroactive Application of Rule 25-30.0371, F.A.C.

In addition to failing to overcome administrative finality, CSWR is seeking retroactive application of the new rule. While CSWR denies that it is seeking retroactive application of the amended rule, it is asking the Commission to apply the new rule to transfers of systems that took place over two years before the amended rule came into effect. Rather than merely clarify or restate the old rule, the new rule was a substantive rewrite of the Commission's acquisition adjustment policy, such that retroactive application is inappropriate.²⁰ Furthermore, the Commission should not apply new rules retroactively absent express language or intent in the rule for retroactive application.²¹ In the instant rule, there is no such retroactive application and so CSWR's argument fails.

¹⁹ Order No. PSC-02-0391-AS-WU, issued March 22, 2002, in Docket No. 991437-WU, *In re: Application for rate increase in water rates in Orange County by Wedgefield Utilities, Inc.*

²⁰ *Env'tl. Trust v. Dept. cf Env'tl. Prot.*, 714 So. 2d 493, 500 (Fla. 1st DCA 1998).

²¹ *Jordan v. Dept. cf Prof. Reg.*, 522 So. 2d 450, 453 (Fla. 1st DCA 1988).

III. OPC's Alternative Motion for Summary Final Order

If the Commission approves staff's recommendation to grant OPC's Motion to Dismiss then OPC's Alternative Motion for Summary Final Order would become moot. If, however, the Commission denies OPC's Motion to Dismiss, staff recommends that the Commission deny OPC's Alternative Motion for Summary Final Order. A Summary Final Order is only appropriate where (1) no genuine issue as to any material fact exists, and (2) the moving party is entitled as a matter of law to the entry of a final summary order. Summary final judgment is therefore generally appropriate only after discovery on all factual issues has been completed. In the instant case, CSWR asserts that there are changed circumstances that warrant consideration of a positive acquisition adjustment. As such, an issue as to a material fact exists such that a Summary Final Order is inappropriate in this case. Further, no discovery has been conducted with respect to CSWR's three petitions for positive acquisition adjustment. Under these circumstances, the Commission should deny OPC's Alternative Motion for Summary Final Order.

Conclusion

Staff recommends that OPC's Motion to Dismiss should be granted in part and denied in part. Dismissal is appropriate and should be granted, however, the Motion to Dismiss should not be granted with prejudice. Administrative finality has attached to the prior denials of CSWR's requested acquisition adjustments and CSWR has not demonstrated a significant change in circumstances or that it is in the public interest to reverse the Commission's prior denials. Furthermore, CSWR is improperly seeking retroactive application of Rule 25-30.0371, F.A.C. However, CSWR should be allowed the opportunity to cure the defect in its petition to demonstrate either a change of circumstances or that reversing the prior denials is in the public interest. Therefore, the motion should not be granted with prejudice. If the Commission approves staff's recommendation to grant OPC's Motion to Dismiss, then OPC's Alternative Motion for Summary Final Order would become moot. If, however, the Commission denies OPC's Motion to Dismiss, staff recommends that the Commission deny OPC's Alternative Motion for Summary Final Order.

Issue 3: Should OPC's Motion to Hold Docket No. 20250052-WS in Abeyance be granted?

Recommendation: If the Commission approves staff's recommendation in Issue 2, OPC's request to hold Docket No. 20250052-WS in abeyance is moot. If staff's recommendation in Issue 2 is denied, OPC's Motion to Hold Docket No. 20250052-WS in Abeyance should be denied. (Sandy)

Staff Analysis:

Motion for Abeyance

OPC's Motion includes a request to hold CSWR's pending rate case in abeyance until the Commission has disposed of CSWR's requests for positive acquisition adjustments.²² OPC states that under Rule 28-106.211, F.A.C. the presiding officer may issue any orders necessary to "effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." OPC contends that because acquisition adjustments are inextricably intertwined with rates, the parties would incur unnecessary rate case expense by litigating the issue in the acquisition adjustment and rate case dockets simultaneously. (OPC Motion 6) Furthermore, OPC notes that without an abeyance, the parties would be subject to multiple sets of MFRs in the rate case, leading to confusion and yet more unnecessary rate case expense. (OPC Motion 6)

CSWR's Response

On April 24, 2025, CSWR filed its Response to OPC's Motion. CSWR contends that OPC is seeking to deprive the Utility of its statutory and due process rights to fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. (CSWR Response 19) CSWR contends that an abeyance would create the very delay in its rate case that Rule 28-106.211, F.A.C. is meant to avoid. (CSWR Response 20) Further, CSWR contends it is currently operating at a substantial loss, and any delay in its rate case would force the Utility to continue operating at a loss, therefore denying it just, reasonable, and compensatory rates. (CSWR Response 21-22)

Staff Analysis

OPC correctly states that under Rule 28-106.211, F.A.C., the presiding officer has the power to grant an abeyance if he deems it necessary. However, staff disagrees that an abeyance is necessary or appropriate in this instance. OPC's Motion to Dismiss CSWR's acquisition adjustment petitions, if granted, would be dispositive of those dockets. If the Commission grants staff's recommendation in Issue 2, the parties' arguments related to holding Docket No. 20250052-WS in Abeyance become moot, because there would be no concurrent litigation of both the acquisition adjustment and rate case dockets.

²² Per the letter approving CSWR's test year, the Utility is expected to file its minimum filing requirements no later than May 23, 2025. (DN 02687-2025)

Date: May 21, 2025

If the Commission denies staff's recommendation in Issue 2 and the acquisition adjustment petitions are allowed to proceed, staff recommends that the request for abeyance should still be denied. If CSWR's requests for acquisition adjustments were to proceed concurrently with the Utility's rate case, the effect on the rate case MFRs would be de minimis. In at least two recent rate proceedings, the Commission has allowed filings with multiple sets of MFRs without bifurcation or holding any part of the proceeding in abeyance.²³ Consequently, staff does not believe that any additional expense would rise to the level necessary to hold the pending rate case in abeyance. Ultimately, OPC has not stated sufficient grounds to disrupt a utility's statutory right to pursue timely rate relief under Section 367.081, F.S.

Conclusion

If the Commission approves staff's recommendation in Issue 2, OPC's request to hold Docket No. 20250052-WS in abeyance is moot. If staff's recommendation in Issue 2 is denied, OPC's Motion to Hold Docket No. 20250052-WS in Abeyance should be denied.

²³ See Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC*; Docket No. 20240026-EI, *In re: Petition for rate increase by Tampa Electric Company*; and Docket No. 20250011-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

Issue 4: Should these dockets be closed?

Recommendation: After the final order is issued, Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS should be closed. Docket No. 20250052-WS should remain open to allow the Commission to address CSWR's requested rates. (Dose)

Staff Analysis: After the final order is issued, Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS should be closed. Docket No. 20250052-WS should remain open to allow the Commission to address CSWR's requested rates.