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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210095-WU

Application for transfer of water
facilities of Sunshine Utilities of
Central Florida, Inc. and water
Certificate No. 363-W to CSWR-Florida
Utility Operating Company, LLC, in
Marion County.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, March 1, 2022

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN FAY: All right. Commissioners, we
3 will address items 5 through 7 next. I've asked
4 staff to be prepared to address all three of those.
5 They essentially raise the same legal issues in the
6 recommendations and in the filings, and so we'll
7 take them up together.

8 With that, what I'd like to do is have Ms.
9 Watts present a summary of the item and then we'll
10 move forward with the parties.

11 Ms. Watts, you're recognized.

12 MS. WATTS: Melinda Watts for staff.

13 CHAIRMAN FAY: And, Ms. Watts, if you could
14 just make sure your mic is lined up and you lean
15 into it. Thank you so much.

16 MS. WATTS: Items 5, 6 and 7 are staff's
17 recommendations on the transfer of facilities and
18 certificates from Aquarina Utilities, Inc.,
19 Sunshine Utilities in Central Florida, Inc., North
20 Peninsula Utilities Corporation, to CSWR-Florida
21 Utility Operating Company, LLC. CSWR has
22 negotiated a purchase agreement with each utility,
23 but will not close on the sales until it has
24 received Commission approval for the transfers. In
25 conjunction with each transfer request, CSWR is

1 also requesting a positive acquisition adjustment.

2 Staff recommends Commission approve the
3 transfers of the facilities and certificates
4 effective the dates that each respective sale
5 becomes final. Staff also recommends Commission
6 deny the request for a positive acquisition
7 adjustment, as CSWR did not demonstrate
8 extraordinary circumstances.

9 Representatives of CSWR and the Office of
10 Public Counsel are available if you have questions.
11 Staff is also available to answer any questions.

12 CHAIRMAN FAY: Okay. Great. Thank you for
13 the summary on that item. What we'll do,
14 Commissioners, is allow the parties here to address
15 the Commission and then we can move forward after
16 that. What I'd like to do is -- I recognize
17 there's three items, and so if taken up separately
18 each individual would have separate time to do
19 those. So, you know, I'd ask you to please be as
20 brief as possible, but to not extend any sort of
21 10-minute discussion beyond what would be
22 allocated, typically three minutes an item. So, if
23 needed, you're welcome to take that time, but,
24 otherwise, please try to be brief.

25 So, with that, Ms. Clark, I'm happy to address

1 you or Mr. Cox first, however -- what order you'd
2 like to present.

3 MS. CLARK: I think I'll go first. And I will
4 say that we adhere to your admonishment about time.
5 I'll probably take three minutes. I think Mr. Cox
6 will take probably five, six, seven minutes to
7 address all three.

8 CHAIRMAN FAY: Okay. Great.

9 MS. CLARK: I am Susan Clark with the Radey
10 Law Firm. Also with me is Tom Crabb, sitting at
11 the end of the table, also with the Radey Law Firm.
12 And Mr. Cox, the founder and president of Central
13 State Water Resources, is sitting next to me. We
14 are here to address the three items, the transfer
15 applications of Aquarina, Sunshine and North
16 Peninsula.

17 We are in agreement with the staff's
18 recommendation, except with respect to the
19 requested acquisition adjustment, and would like to
20 address that issue as it applies to all three of
21 the applications. We disagree with your staff
22 recommendation and are here to request that you
23 defer a decision on an acquisition adjustment until
24 the initial rate case involving these three
25 transfers. I will cover the legal authority for

1 that and the precedent for deferring that decision
2 and Mr. Cox will cover the reasons for requesting
3 the deferral.

4 As you know, it's Section 367.071 of the
5 Statute that provides authority to you regarding
6 transfers. Subsection 5 speaks to the
7 establishment of rate base at the time of transfer,
8 and that subsection authorizes you, but does not
9 require you to set rate base at that time. So you
10 need not determine acquisition adjustment as part
11 of the transfer. Likewise, your rules do not
12 require a decision on an acquisition adjustment.

13 That you have the authority to determine rate
14 base is made more clear by the fact to defer
15 rate -- deciding rate base is made more clear by
16 the fact that when that statute was first enacted,
17 it required you to set rate base at the time of
18 transfer. But, within two years, the legislature
19 changed it so you would have the authority to defer
20 it.

21 Commission precedent supports deferring a
22 decision on an adjustment and it has done so in the
23 past to provide the opportunity to develop facts
24 relating to an adjustment. Of particular note is
25 the case of the transfer of PPW Water and Sewer

1 Company to Utilities Inc. of Florida. In that
2 case, the utilities requested a deferral of the
3 decision and the Commission granted that deferral.
4 Because Central States is going to continue the
5 rates currently in effect for each of the
6 transferred utilities, there is no impact to
7 customers as a result of deferring that decision.

8 As a final point, Central States recognizes
9 that a positive acquisition adjustment will not be
10 included in rate base, absent proof, consistent
11 with the requirements of your rules, and that the
12 burden to establish the basis for an adjustment
13 rests with them.

14 I'd like to turn it over to Mr. Cox now to
15 cover the reasons for requesting the deferral.

16 CHAIRMAN FAY: Mr. Cox, you're recognized.

17 MR. COX: Thank you. As Ms. Clark mentioned,
18 I'm Josiah Cox. I'm the founder and president of
19 Central States Water Resources and CSWR Florida,
20 which is the applicant of these transfer cases
21 here.

22 I appreciate the opportunity to speak today
23 before the Commission. I appreciate all the hard
24 work the staff's put in these transfer
25 applications. We know it's -- it's a lot.

1 So we're really pleased by the Commission
2 staff's recommendation for approval of the three
3 transfer applications. I want to ensure the
4 commission CSWR has the managerial, technical
5 experience and expertise necessary to own and
6 operate utilities currently owned by Aquarina,
7 North Peninsula and Sunshine Utilities. We also
8 have the capital necessary to upgrade, improve and
9 maintain these systems, and to provide safe and
10 reliable service to customers, running them in
11 compliance with all applicable health and
12 environmental regulations.

13 As stated by your staff, approval of these
14 transfers is in the public interest. CSWR will
15 provide long-term safe, reliable services to these
16 communities where the current owners are seeking to
17 exit the utility business. In addition to three
18 transfers under consideration today by CSWR, we
19 have one other transfer pending, and we plan to
20 file four additional applications in the very near
21 future.

22 So while I agree with staff's overall
23 recommendation, I disagree with the recommendation
24 on issue number three, the no acquisition
25 adjustment be authorized, and respectfully request

1 you defer any consideration of such an adjustment
2 until our initial rate case, which we hope to file
3 sometime in 2023.

4 This has been an extraordinary time as we have
5 come to terms with owners and launched these
6 acquisition cases during a pandemic, which has made
7 getting accurate assessments of plant records
8 challenging. Since I formed Central States Water
9 Resources, we've acquired more than 400 water and
10 wastewater systems, providing safe and reliable
11 service to customers in nine states. In most of
12 these transactions, even in purchases with
13 extremely troubled systems CSWR's negotiated price
14 has exceeded the reported net book value of the
15 assets. That's because the value to the sellers is
16 greater than the net book value. There are
17 numerous reasons why sellers refuse to sell even
18 troubled systems for net book value, but it is
19 reality across the country, and something we face
20 in every state we operate. In all of these states,
21 regulators have decided acquisition adjustments
22 don't need decided in the transfer case. Instead,
23 they should be deferred to an initial future rate
24 case.

25 Staff opposes any grant of an acquisition

1 adjustment because they believe CSWR failed to
2 provide sufficient evidence with extraordinary
3 circumstances and/or failed to quantify benefits
4 CSWR grant customers. Specifically, staff believe
5 acquisition adjustment lacks specific quantitative
6 information. I know specificity and certainty
7 about long-term rate stability and cost
8 efficiencies can't be determined until CSWR has
9 owned and operated these systems. Our experience
10 shows that while we don't know what extraordinary
11 circumstances exist in those systems, or how
12 extraordinary those circumstances are and may
13 become until we run the utilities, which means we
14 cannot quantify the benefits our ownership will
15 provide to customers.

16 Pre-acquisition due diligence is helpful, but
17 only provides some insight in the -- on the
18 utilities we buy. It's small utilities run by
19 owners who aren't dedicated to water and wastewater
20 utility ownership. There are too many variables to
21 accurately quantify with due diligence alone. That
22 means deciding on acquisition adjustment in the
23 acquisition case is premature and potentially
24 unfair. Waiting until all the evidence can be
25 accurately gathered and presented based on real

1 world facts, all interested parties present
2 evidence supporting or opposing future requests.

3 Another reason for deferring acquisition
4 adjustments decisions is the accuracy of the
5 seller's financial records. Most sellers are not
6 utility professionals. We often find their
7 financial records are not kept according to NARUC
8 standards. For example, plant-related costs are
9 often expense instead of being capitalized. Net
10 book value of assets require to be greater than
11 utilities reported, because those utilities are run
12 by water and wastewater utility professionals. We
13 can make those determinations -- we can't make
14 those determinations until we have owned and
15 operated the systems for a time.

16 Sunshine, for example, which is the largest
17 transaction under consideration today is that
18 change rates are undergone a rate case audit for 10
19 years. It's possible that numerous booking errors
20 could have been made. Deferring acquisition
21 adjustment decisions until our first rate case
22 allows CSWR to review all plant records and verify
23 them against actual plant service. All parties
24 would also have the same opportunity to fully audit
25 records and plant record adjustments to ensure an

1 accurate net book value is established, including
2 any potential acquisition adjustments. A deferred
3 decision ensures a more robust and complete record
4 is available for the Commission. Because CSWR is
5 adopting the current rates, customers won't be
6 adversely affected by deferring a final decision on
7 acquisition adjustments. We understand the
8 financial risk associated with closing before
9 decision acquisition adjustments is made, but it's
10 a risk that CSWR is willing to make.

11 In conclusion, as I previously mentioned, your
12 staff finds this transaction is in the public
13 interest. CSWR is a professional water and
14 wastewater utility with a proven track record of
15 providing safe and reliable service for smaller
16 utilities across the country. And we bring those
17 utilities the benefits of CSWR's economies of scale
18 and our water and wastewater operations
19 constructions expertise.

20 We're willing to bear the risk of proving
21 acquisition adjustment in a future case and we
22 believe, as our experience in other jurisdictions
23 has shown, that deferring an acquisition adjustment
24 decision will work well here in Florida. This is a
25 fair and reasonable approach for the company,

1 customers, Commission and all interested parties.
2 Therefore, I respectfully request you defer a
3 decision on the acquisition adjustment to a future
4 date. Thank you.

5 MS. CLARK: Mr. Chairman, if I may.

6 CHAIRMAN FAY: Yes, Ms. Clark. Go ahead.

7 MS. CLARK: Reserve time to respond to
8 whatever Public Counsel may say regarding the
9 acquisition.

10 CHAIRMAN FAY: Sure. And I'll ask you to be
11 brief and specific to the response.

12 Office of Public Counsel. Go ahead.

13 MS. WESSLING: Thank you, Commissioners.

14 Allie Wessling on behalf of the Office of Public
15 Counsel, along with Stephanie Morse and Anastasia
16 Pirrello. We're here representing the customers of
17 Aquarina Utilities, Incorporated, Northern
18 Peninsula Utilities Corporation, and Sunshine
19 Utilities of Central Florida. We would like to
20 comment on, obviously, Agenda Items 5, 6 and 7.

21 And OPC does support staff's recommendation to
22 deny the positive acquisition adjustments for all
23 three of these cases on the basis that Central
24 States Water Resources has failed to carry their
25 burden to demonstrate extraordinary circumstances

1 sufficient to justify the enormous, enormous
2 acquisition adjustments requested in these cases.
3 Granting any of these adjustments would be contrary
4 to the Commission's precedent and well-established
5 policy and will result in rates that are patently
6 unfair to the customers, thus, directly contrary to
7 Florida Statute, Section 367.121(1)(a).

8 We did some rough estimates, based off of what
9 we were presented, and the revenue requirement
10 impact of these acquisition adjustments for
11 Aquarina's water customers would be an increase of
12 approximately 60 percent, just with this
13 adjustment. Similarly, Northern Peninsula's
14 customers wastewater revenue requirement would be
15 increased by 65 percent. And for a Sunshine
16 customer's bill, that could result in an estimated
17 increase of approximately 82 percent.

18 This is unprecedented and shocking.
19 Administrative Rule 25-30.0371 and precedent
20 dictate that a positive acquisition adjustment is
21 an extraordinary tool designed to rescue troubled
22 systems and provide customers better service at a
23 reasonable price. Neither policy would be served
24 by granting the buyers request here. None of the
25 systems at issue are severely distressed. And CSWR

1 has stated in these dockets they are not able to
2 enumerate any potential efficiencies or cost
3 savings at this time, and has offered nothing other
4 than uncorroborated assertions regarding any
5 possible benefit to the customers of Aquarina,
6 Northern Peninsula and Sunshine Utilities.

7 Aquarina is by no means a distressed or
8 failing facility. Since 2019, the Commission has
9 issued both rate case and limited proceeding orders
10 in which the utility received rate increases and
11 authorization to recover costs for capital
12 improvements and maintenance. Aquarina has had
13 only a couple of customer complaints since the
14 recent limited rate case in 2020. The record
15 evidence demonstrates the utility is in compliance
16 with regulatory requirements and there is simply no
17 record evidence even approaching the type of
18 extraordinary circumstance required by Rule
19 25-30.0371 to grant CSWR a positive acquisition
20 adjustment of almost \$2 million to be paid by the
21 customers.

22 As for Northern Peninsula, while there are
23 some repairs and compliance issues which do need to
24 be addressed, just as staff came to the conclusion,
25 those improvements do not meet the extraordinary

1 circumstance threshold set forth in the Royal
2 Waterworks case, which is the precedent here. The
3 necessary improvements are the responsibility of
4 the utility owner, regardless of who that owner is.
5 If Central States purchases this utility and makes
6 those improvements, Central States will be carrying
7 out the duties of a responsible utility owner, not
8 engaging in extraordinary circumstances --
9 extraordinary measures that would justify the
10 requested positive acquisition adjustment.

11 Additionally, Central States stated that
12 ensuring sales proceeds were sufficient to retire
13 the long-term debt of the seller was a major factor
14 in the negotiations of this purchase price of \$1.4
15 million. And, as staff appropriately pointed out,
16 the outstanding debt of a seller is not a listed
17 factor to be considered pursuant to Rule
18 25-30.0371(2), nor does it promote benefits to
19 customers or assist with bringing the utility into
20 regulatory compliance. Northern Peninsula's
21 customers should not be indefinitely saddled with
22 the cost of covering the seller's debts, especially
23 with no proof that those debts were even prudently
24 incurred.

25 Additionally, regarding Sunshine, the quality

1 of service at Sunshine is excellent, as
2 demonstrated by the mere six complaints relating to
3 billing -- unrelated to billing over the last five
4 years, and the company is in compliance with all
5 DEP regulatory requirements. Also, Florida is not
6 a fair market state, and any assertion that fair
7 market should be considered is wrong as a matter of
8 law. Fair market value is not enumerated in the
9 rules and does nothing to support the purpose or
10 goals of this rule. There is nothing extraordinary
11 about this case or the other two that would justify
12 these acquisition adjustments. In fact, in the
13 case of Sunshine, the purchase price is 23 times
14 the net book value, and customers should not be
15 held responsible for CSWR's overpaying for Sunshine
16 or any of the other companies.

17 The buyer has stated in response to discovery
18 in all three cases, and again today, that it
19 intends to file a rate case as soon as possible
20 after the acquisition is approved. To the extent
21 that you find capital projects necessary and
22 prudent, the Commission's existing mechanism for a
23 rate case recovery of prudent cost with a
24 reasonable return is appropriate to adequately
25 compensate the utility for work done in the normal

1 course by a responsible owner. Ordering customers
2 to pay additional acquisition premiums in the
3 millions of dollars for all three of these
4 companies, as requested by CSWR, would represent a
5 radical departure from both the law and Commission
6 precedent.

7 CSWR has failed to carry their burden of proof
8 to demonstrate extraordinary circumstances, and we
9 asked you deny the acquisition adjustments.

10 On the subject of the deferral as presented
11 and requested today by CSWR, customers have a right
12 to know what their rates are going to look like.
13 These cases have been pending for a long time.
14 They were set -- two of these were set at the last
15 agenda, moved here. We're all here today. We have
16 all the information we need. These -- both of --
17 all of these issues should be resolved here today,
18 and there's no reason to defer the ruling on the
19 acquisition adjustment. Delaying the decision
20 would deprive customers of the opportunity to
21 protest the transfer, if the rates ended up being
22 egregious, they're sort of asking to have their
23 cake and eat it too, down the road.

24 It's also unlikely that they will somehow
25 identify extraordinary circumstances if the system

1 somehow falls into disrepair in between when the
2 transfer is granted and a decision on the
3 acquisition adjustment is made and that -- it's
4 CSWR's fault and they cannot create extraordinary
5 circumstances and then expect to be compensated for
6 fixing them.

7 Our engineer has visited the facilities and
8 saw nothing to suggest they're in any state of
9 disrepair. Any attempt to claim months down the
10 line that a major issue was discovered must be seen
11 for what it is, which is an invented problem. And
12 we do not agree with counsel that the bulk of the
13 Commission's precedent supports the fact that this
14 adjustment can and should be deferred. We believe
15 that this decision should be made here today and it
16 should be denied. Thank you.

17 CHAIRMAN FAY: Thank you, Ms. Wessling.
18 Commissioners, what I'll do next is allow for Ms.
19 Clark to make a brief response and then we'll take
20 questions for the parties or staff at that time.
21 So, with that, Ms. Clark, please be brief. Thank
22 you.

23 MS. CLARK: Yes. I will point out she's made
24 several points, such as the impact on rates. We
25 don't know what the impact on rates would be,

1 because there are a number of factors and that is
2 why we answered that in that way when we responded
3 to their extensive interrogatories about the
4 transfer, regarding this -- the customer's rights
5 or the opportunity to protest an acquisition
6 adjustment. They will have a more robust
7 opportunity to do that as part of the rate case.
8 As you know, you'll do customer hearings as part of
9 a rate case and there will be far more record
10 evidence for you to make a determination on any
11 acquisition. It may not be the full amount, but
12 some acquisition adjustment and whether or not that
13 is fair to customers. It really has nothing to do
14 with the public interest in terms of is this
15 utility that is purchasing these companies ready,
16 willing and able, have the technical and financial
17 expertise to operate the company. Really, the
18 acquisition adjustment is a separate issue.

19 MR. COX: I'll just say one more thing. I
20 think, just seeing the staff's audit of financial
21 records kind of shows what we're saying about the
22 existing owners not really understanding their
23 assets. I mean, think Sunshine they brought up is
24 a well-run utility. It serves, you know,
25 potentially 16,000 people and its net book value is

1 a couple hundred thousand dollars in the books. So
2 either there's a ton of assets that have been
3 properly reported, or the system's very close to
4 the end of its useful life across the board. It
5 kind of -- it's part and parcel how we look at this
6 whole thing.

7 And, obviously, we understand the burden of
8 proof is ours to prove those things in a future
9 case, and understand that if we don't, that's
10 financial risk that we bear.

11 CHAIRMAN FAY: Okay. Thank you, Mr. Cox.
12 Commissioners, I would allow you at this time, if
13 we have questions for either the parties and/or our
14 staff.

15 I have a question for OPC. I just want to
16 make sure I understand the position. So,
17 obviously, you're -- you have opposition on the
18 acquisition adjustment being granted. And then I
19 think your comments you have opposition of that
20 portion of it being deferred. Also do you -- are
21 you supportive of the acquisition as a whole if it
22 doesn't include the acquisition adjustment, issues
23 one and two for each of these three items?

24 MS. WESSLING: Our main focus today is
25 addressing the acquisition adjustment and the

1 deferral, and we don't have a particular position
2 to take regarding the transfer itself. It's just
3 the acquisition adjustment, and what that would
4 mean for all of these customers and -- including if
5 it was deferred, and that's -- that's why we're
6 here.

7 CHAIRMAN FAY: Okay. Great. Just wanted to
8 make sure I understood that position. I also just
9 want to ask. This question is probably for staff.
10 So that acquisition adjustment itself is for water
11 and wastewater in the rule, but I guess we look at
12 a lot of data that's submitted from the utility, so
13 essentially to decide if that adjustment meets the
14 criteria -- and you have the rule in here and some
15 of the things we look at -- that requires a lot of
16 information for us to make that adjustment. The
17 recommendation appears to say, there just really
18 isn't sufficient information to even say sort of
19 yea or nay on that, one way or another. Is that
20 typical for a water/wastewater utility, or do we --
21 are we able to glean more information about it?

22 MR. FLETCHER: If we needed more information,
23 we requested that information, as well Office of
24 Public Counsel. We only got qualitative. The
25 Commission's practice is -- or policy is to look at

1 five factors that are enumerated in provision two
2 of the acquisition adjustment rule that was used in
3 other industries, as far as the benefits that flow
4 to the ratepayers. And the past decisions, up
5 front, has been that the net savings to the
6 customers been greater than the positive
7 acquisition adjustment requests.

8 And just would note one final thing about this
9 rule, and as far as deferral of the decision, I
10 think this rule contemplates that the decision is
11 done upfront, because of provision (4)(a) of the
12 rule. It says the amortization of acquisition
13 shall begin at the date of the issuance of the
14 order approving the transfer of assets. That's not
15 a future rate case. That's up front in the
16 transfer case.

17 CHAIRMAN FAY: Okay.

18 MR. FLETCHER: Is what was envisioned.

19 CHAIRMAN FAY: Thank you. And then this might
20 be a question for legal, but if the acquisition
21 were to be denied by the Commission, it appears
22 there would not be -- I just want to make sure I'm
23 clear on this -- there would not be a prohibition
24 on the utility coming forward to potentially ask
25 the Commission for recovery of capital investment,

1 so if they decided to make improvements at that
2 point in time, this denial wouldn't impact that,
3 that review, correct?

4 MS. WATTS: That's correct. That denial would
5 not impact.

6 CHAIRMAN FAY: Okay. And, just to make sure
7 I'm absolutely clear, that analysis is completely
8 separate -- in other words, we would need separate
9 information to make that prudence decision than
10 what we typically require here for an acquisition
11 investment, or would the same data be looked at?
12 That might be a technical --

13 MR. FLETCHER: For those planned improvements
14 that are made, that would be in the normal course
15 of their next rate case where rates are changed,
16 the prudence of any planned investment, as far as
17 whether they are proper, prudent and reasonable
18 would be examined at that time.

19 CHAIRMAN FAY: Okay. Great. Commissioners,
20 I'm open to any discussion or debate on this item
21 before we address the motion. Commissioner Clark,
22 you're recognized.

23 COMMISSIONER CLARK: I'm certainly not going
24 to be the guy to ask for the deferral, but --
25 that's another issue.

1 I've got a couple questions. Mr. Fletcher,
2 you indicated that approving a positive acquisition
3 adjustment would require amortization to begin
4 immediately. The parties indicated that they had
5 planned to use the adopted current proposed rate
6 that Aquarina has in place now until they came in
7 for a rate case. Did you get contrasting
8 information to that?

9 MR. FLETCHER: The day is the first day I've
10 heard about the deferral of the positive
11 acquisition adjustment request. So, prior to
12 today, I didn't have knowledge of that.

13 COMMISSIONER CLARK: So, Ms. Clark, were you
14 saying that y'all plan -- do not plan to use -- if
15 we did a deferral, of course, you don't have the
16 positive acquisition adjustment at that point in
17 time. You're planning to leave the rates exactly
18 as they are? How do you account for the begin -- I
19 guess you're going to accumulate. Would this be a
20 deferred accumulation that you could pick up at a
21 point in time when we -- if we were to give a
22 positive acquisition adjustment?

23 MR. FLETCHER: Rates do not change --

24 CHAIRMAN FAY: I'm sorry, Mr. Fletcher. Just
25 real quick, I'll just have Ms. Clark address that

1 and then we'll have you respond. Thank you.

2 MS. CLARK: Mr. Chairman, I did see that
3 provision in the rule. I mean, he's using it to
4 imply it's a requirement that you make that
5 decision at that time. The statute does not
6 require you to do that, and there have been
7 circumstances where more information is required.
8 As we indicated, we intend to file a rate case in
9 2023. And at that time we could just decide if the
10 amortization of any acquisition adjustment would
11 date back to the date of the transfer.

12 CHAIRMAN FAY: Great. Thank you. Mr.
13 Fletcher. Go ahead.

14 MR. FLETCHER: Okay. I apologize. I didn't
15 answer your first question, Commissioner Clark.
16 Rates do not change in the transfer. You
17 grandfather the rates is the Commission practice,
18 and then until such time as they come in for rate
19 relief do the rates change.

20 COMMISSIONER CLARK: So I guess I'm confused.
21 We could consider -- what's the damage in deferring
22 the decision on the accumulated -- excuse me -- on
23 the acquisition adjustment? My assumption, when
24 this idea was first broached, was that if we
25 adopted -- if we didn't give them the

1 accumulated -- I keep going back to accumulated
2 depreciation. I keep trying to get the two
3 confused here. If we did not give them the
4 acquisition adjustment that -- or if we gave that,
5 that began to accumulate -- it began to be charged
6 immediately, but it does not. So what's the harm
7 in a deferral here and letting them present their
8 case?

9 MR. FLETCHER: Well, my understanding and is
10 (4)(a) is the amortization -- this is in the
11 rule -- of the acquisition adjustment shall begin
12 at the date of the issuance of the order approving
13 the transfer of assets. Transfer of assets is in
14 this docket, not the future rate case. So I can
15 let legal speak to that, but further, as far as the
16 posture there -- but that's clear to me of why the
17 intent of this rule, and this rule was developed in
18 2002 to accumulate -- to basically put out there
19 the Commission's policy regarding acquisition
20 adjustment. And the whole reason for that is
21 because we're an original cost jurisdiction state,
22 and this is an essential service. And, you know,
23 we have jurisdiction of water and wastewater
24 utilities in 1959. And one of the reasons why it
25 was original cost is because of this essential

1 service was needed to be valued at original cost,
2 but when it was devoted -- the facilities was
3 devoted to public use. And the fluctuation, based
4 on fair market value, and what that did,
5 particularly in the '20s and '30s by the electric
6 industry of inflating rate base, and no additional
7 benefits, same assets, but inflating rate base,
8 which earn a rate of return on for such an
9 essential service was deemed not prudent by
10 legislature. And when they put it into statute,
11 they put in as original cost for not only water and
12 wastewater in '59, but in '51 for the electric and
13 '52. Because -- and then what the Commission and
14 their policy here, which is the same policy since
15 '89 when investigation was opened, or the overall
16 Commission policy, which is rate base should not
17 change unless there exists extraordinary
18 circumstance.

19 Now, later, when that was defined, and is
20 defined a little bit here in the rule and in other
21 industries, is looking at factors such as increased
22 quality of service, lower operating costs, the
23 ability to increase, ability to attract capital, to
24 make capital improvements, to the lower overall
25 cost of capital, and also the technical, managerial

1 and operational experience of the buyer. If they
2 could show that, and in the past the precedent has
3 been by this Commission long-standing among the
4 different industries, is you have to -- in order to
5 show extraordinary circumstance, you have to meet
6 those five factors in savings to the customers
7 upfront. And what the Commission has done is when
8 they did that up front, they made it provisional,
9 and they actually had to prove it later. And one
10 time in electric -- excuse me, in gas, the savings
11 didn't materialize and it was taken away.

12 But I think the reason why the Commission
13 practice is to do it on a provisional basis,
14 upfront at the time of transfer is it's very
15 difficult to unwind this later down the road. What
16 happens if they don't realize the savings? And
17 it's -- then you're stuck with an entity, all due
18 respect that willing to accept that financial risk,
19 but in Sunshine's situation, you're talking about
20 positive acquisition adjustment of \$5 million to
21 the balance sheet. So --

22 COMMISSIONER CLARK: But I think it's related
23 to, not necessarily the amount, but it is -- it is
24 the increase above what book value is. I get. I
25 agree. I think -- I think the whole assessment is

1 right on target and your analysis was excellent. I
2 do think there are possibilities of having,
3 primarily access to capital and improved service,
4 but I also think that there is a rate issue that
5 comes into here. And this is one of those cases
6 where if you give -- and one of these is
7 20-something times book value. Listen, 16,000
8 customers for \$150,000, that would be a bargain.
9 That's a bargain by any stretch of the imagination.
10 You -- there is a market value there. I agree, and
11 I think that you should probably have some
12 latitude, some room in here somewhere. I don't
13 think it's 23 times. I don't think you can include
14 that in the rate base and not have, you know, an
15 increase in rates of about 100 percent. That looks
16 like half your revenue requirement almost.

17 So I think there's some room in here to have
18 some compromise. I don't know what that number is.
19 I'm not sure why we didn't just have a rate hearing
20 on this and hearing -- and this is a PAA, am I
21 correct?

22 MR. FLETCHER: If you do it in three years,
23 PAA.

24 COMMISSIONER CLARK: I think you could have a
25 great case to make that you could have some

1 extenuating circumstances. I understand -- I mean,
2 you're saying Mr. Fletcher, you don't say -- I
3 guess you're turning that off -- we don't have
4 latitude for deferral of a portion of this. I
5 think that's what I'm continuing to hear.

6 MR. FLETCHER: It deviates from the Commission
7 practice and policy. Plus, it's just my reading
8 and I can defer to GCL. When it talks about the
9 amortization of positive accum beginning at the
10 time the assets are transferred, that tells me that
11 the intention of this rule and intention of the
12 Commission, the purpose of this rule, was for it to
13 be determined at the time of transfer.

14 CHAIRMAN FAY: Great. Thank you, Mr.
15 Fletcher. And, just to clarify, you were stating
16 the five components that are reviewed that -- they
17 don't at all have to be met, those are just
18 components that we look at as a Commission to
19 decide if it's an extraordinary circumstance,
20 correct?

21 MR. FLETCHER: That's correct.

22 CHAIRMAN FAY: Okay. Any other questions,
23 Commissioners?

24 MS. CLARK: Can I respond if --

25 CHAIRMAN FAY: Yeah, if not -- and what I'd

1 like to do, just before I take a motion from the
2 Commission, I'd like OPC, and then I'll also allow
3 your response. But, if you could, I just want to
4 make sure we're addressing the additional questions
5 and comments that were raised that staff has
6 answered, and not being repetitive from the
7 original arguments. So, with that, OPC you're
8 recognized.

9 MS. WESSLING: Thank you, again,
10 Commissioners. And we echo everything that staff
11 has said. As far as basically doing anything other
12 than denying the acquisition adjustment today would
13 be against the precedent and practice of the
14 Commission in pretty much every other acquisition
15 adjustment case. These facilities are all in fine
16 working order, they're all functional, they're not
17 on the brink of, you know, falling apart tomorrow.
18 This is -- acquisition adjustments are meant to, as
19 we all know, address the extraordinary
20 circumstances, and they're meant to be granted in
21 the case of extraordinary circumstances. And, with
22 all of the information that staff and OPC has
23 learned through discovery, despite the lack of
24 information provided by the company, they're just
25 simply -- they have not met their burden to justify

1 this acquisition adjustment, and the facts that
2 support the acquisition adjustment are not going to
3 change between now and whenever this case is
4 brought back up. The appropriate method for
5 handling the costs that the company is going to
6 incur, assuming the transfer is granted, the
7 appropriate way to do that is through a rate case,
8 and that is completely separate and apart from the
9 acquisition adjustment, and we just feel that this
10 should not be deferred and it should be denied here
11 and today. Like we said, the facts regarding the
12 acquisition adjustment will not change.

13 CHAIRMAN FAY: Issue three specifically?

14 MS. WESSLING: Correct.

15 CHAIRMAN FAY: The item itself you don't have
16 opposition to?

17 MS. WESSLING: Correct.

18 CHAIRMAN FAY: Okay. Ms. Clark, please.

19 MS. CLARK: If I might let Mr. Cox speak first
20 and then I would like to address something that
21 staff said.

22 CHAIRMAN FAY: Sure. Mr. Cox, I'm going to
23 ask you to be really brief and speak to the
24 additional comments that are made.

25 MR. COX: Yes, sir. I would just respectfully

1 disagree about the state of systems. You know, in
2 North Peninsula in particular has got the last
3 couple years gone in and out of agreed orders, the
4 Department of Environmental Quality, they're about
5 ready to enter into another agreed order. I think
6 it kind of speaks to the situation. You've got
7 20,000 people here, they're served by utilities
8 who -- you know, net book value is determined right
9 now is just over a million dollars. I think just
10 from a common sense standpoint, that doesn't seem
11 like that's right. There's actually, obviously,
12 massive reinvestment needs to be done. You need
13 professional operators there, and I think that
14 speaks to having the opportunity at a future point
15 to be able to, you know, bring evidence forward
16 about an acquisition adjustment.

17 CHAIRMAN FAY: Thank you. Ms. Clark.

18 MS. CLARK: Yeah. My final point was with
19 regard to the rule. I think Commissioner Clark is
20 absolutely right. If the rates stay the same and
21 you begin amortizing at the date of the transfer,
22 the same thing would happen if you defer it, in
23 terms of when the amortization would start. I
24 don't think you should be inferring from your rules
25 a requirement that the statute doesn't put on you.

1 CHAIRMAN FAY: Thank you. With that -- oh,
2 Commissioners, I will go to Commissioner Passidomo
3 first and then Clark. Thank you. You're
4 recognized.

5 COMMISSIONER PASSIDOMO: Thank you, Mr.
6 Chairman. I didn't -- I was just going over the
7 rule. I pulled it up. I do -- I'm going to have
8 to kind of go and agree here with the -- you know,
9 I don't know about with staff's sort of
10 interpretation here about -- I see these as two
11 separate things. So the amortization period,
12 Subsection (4)(a), in setting that amortization
13 period, that seems to me to be separate than
14 whether to, you know, to grant or not to grant the
15 acquisition adjustment and deferring it. It's at
16 that point we -- you know, if we choose to defer
17 it, it would go back to that -- when we would set
18 the amortization. So if you defer -- if we defer
19 it, I think then -- and if we were to, at a certain
20 point of that, approve it or -- you know, then
21 that's when the amortization period would kick in.
22 I might defer to the GCL about that, but that's --
23 that's my interpretation of it.

24 CHAIRMAN FAY: Yeah.

25 MS. CRAWFORD: If I could be heard on the

1 deferral issue just briefly. Ms. Clark is correct.
2 The statute doesn't mandate. It says the
3 Commission may set net book value. However, our
4 overwhelming practice has been to set net book
5 value at the time of transfer to make the decision
6 regarding acquisition adjustments at the time of
7 transfer. And I think there are some good reasons
8 for that. I think Mr. Fletcher's comments are very
9 well taken, especially given the magnitude of the
10 request in this case that there is the risk down
11 the road of what happens if the acquisition
12 adjustment is not granted subsequent. What happens
13 to the overall operations of the utility, is that a
14 situation -- I'm not saying this purchaser in this
15 case necessarily, but a purchaser might want to
16 walk away from the systems at that point.

17 I also struggle, frankly, when I look at, for
18 example, Item 5 on page 11, there's a listing of
19 things that the utility believes it can offer to
20 these systems. There's things like managerial and
21 operational oversight, engineering planning,
22 ongoing utility maintenance, utility
23 record-keeping. I don't know what they're going to
24 quantify down the road for us that helps me
25 understand any better why these are extraordinary

1 circumstances. These are things we would expect
2 any prudent utility taking on a system in Florida
3 to do. I don't believe looking at these,
4 utilities, and, yes, one of them has a consent
5 order. That's not exceptional to me. That happens
6 with utilities. They come in and out of DEP
7 compliance. I don't see in these cases the kinds
8 of poor management and deteriorated facilities that
9 one expects one would see that would encourage a
10 finding of extraordinary circumstances. So even if
11 the Commission could defer, I think we have,
12 frankly, sufficient information to make that
13 decision now, and I do think that is overwhelmingly
14 consistent with what the Commission has done.

15 CHAIRMAN FAY: Sure. So there's no legal
16 prohibition of doing so, but it would be
17 inconsistent with policy and how they've been
18 carried out in the past?

19 MS. CRAWFORD: I'm sorry. One more time.

20 CHAIRMAN FAY: It's -- there's no prohibition
21 to doing so, is what you're saying. You don't
22 specifically read it to have a prohibition. You're
23 just stating that that's how Commission's -- they
24 ended up in the history, and you think that's
25 significant.

1 MS. CRAWFORD: I do. I do think it's
2 significant. I'll always say I'm not a numbers
3 gal, so I'll have to defer to Mr. Fletcher about
4 the importance of what he's pointed out in the
5 subsection.

6 CHAIRMAN FAY: Great. Thank you. I'll go to
7 Commissioner Clark and then Commissioner Graham.

8 COMMISSIONER CLARK: Yeah. I would just say,
9 Ms. Crawford, I agree with your point. We don't know
10 that there -- we don't know that they can do a
11 better job than the other utility. But then again,
12 at the same time, we don't know that it can't
13 either. And so I think that some room here for --
14 again, we're talking about, okay, do you grant them
15 23 times book, or do you grant them two times book?
16 Is there a -- is there some advantage they bring to
17 the table? And is there a value associated with
18 something that they're bringing to the table? My
19 point is, I think you've done a very poor job of
20 demonstrating that to this point. I think you
21 should have had your ducks together before you got
22 here with that and be able to prove that you had
23 it. But I also get, maybe you don't know all the
24 answers right now. I understand our -- I see both
25 sides of this, and I'm kind of torn in this

1 particular case.

2 My question would be to the potential buyer,
3 if we said there is no acquisition, are you still
4 going to go ahead and purchase the system? That's
5 kind of an important, important thing that would
6 drive my decision here.

7 CHAIRMAN FAY: Commissioner Clark, I think
8 that's a relevant and appropriate question. So,
9 Mr. Cox, if you'd like to answer that, in addition
10 to what we have in the record already.

11 MR. COX: Yes. I guess the frank answer is, I
12 don't know. And the reason for that is, I believe,
13 you know, and I've seen in other circumstances for
14 other systems, as we bought -- you know, for
15 example, these systems don't have, like, accurate
16 underground utility mapping, they don't actually
17 know the assets they own all the way. Right. So,
18 you know, there is some room at some future rate
19 case that I would come in and say, hey, the
20 original recording of these assets was incorrect,
21 some of these assets were never recorded. Right.
22 But that's a different process than having the
23 ability to say, here are the economies of scale,
24 we're bringing the benefits, so we can, you know,
25 realize some of this acquisition premium. I don't

1 know -- I don't know what that math is going to be
2 at a future date.

3 I can tell you, because these are small
4 utilities run by people who are not utility
5 people -- I mean, they're just not. Right.
6 They're developers who inherited the systems, you
7 name it, that's where they come from. Until you
8 run these things and really have a feel for what
9 the assets are and what's going on, that's why we
10 can't quantify them, because the owners are not
11 going to give up -- you know, I can walk out to a
12 system -- and you see the North Peninsula pictures
13 and show deterioration in aeration basins, you see
14 DEP, you know, violations. You can see all that.
15 Until you actually run it, you don't realize how
16 bad the situation really is, how deteriorated is
17 the underground piping, you know, you can do smoke
18 testing. I think those are the things that we have
19 to own it before we can come before you with an
20 accurate -- I think whatever wants is more accurate
21 record, and we do, too. And it will take time for
22 us to own and operate to present that accurate
23 record. And then from there, you make a decision.

24 CHAIRMAN FAY: Thank you.

25 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

1 You know, it's interesting. The positive
2 acquisition adjustment is a high hurdle, and
3 there's a reason why it's a high hurdle. And we're
4 going back and forth, and I think Commissioner
5 Clark hit it right on the head. The buyer did a
6 poor job of doing his job. The burden's on him to
7 come before us and show the extraordinary
8 circumstance. The burden is not on us to dig to
9 find it. And that has not happened. Just because
10 somebody comes to town and decides they want to pay
11 in time whatever the value is, or more than the
12 value is, should that burden be put on the
13 ratepayers? I mean, these -- we have so many -- we
14 have so many different water systems that come
15 before us that the quality is just so poor. This
16 is not one of them. There's nothing wrong with
17 these three systems. They're working correctly
18 right now. I think the message you need to send
19 is, if you want to spend that much more than what
20 this thing is worth, then it's on you. And if we
21 need to do something moving forward, we can do that
22 in a rate case, but I don't see the reason why we
23 should defer turning down this acquisition
24 adjustment now because, again, the applicant did
25 not do his burden. If he wants to still purchase

1 it, he can still purchase it, and we can still
2 approve the transfer. If he does not want to
3 purchase it, then this utility will work just as
4 fine tomorrow as it did today, as it will -- as it
5 did last year. That's my opinion.

6 CHAIRMAN FAY: Commissioner Passidomo.

7 COMMISSIONER PASSIDOMO: Thank you, Mr.
8 Chairman. I'll just -- I'll be brief. I have to
9 agree with my colleagues here about, you know, the
10 failure to live up to the -- indeed it is a high
11 burden, proving extraordinary circumstances and
12 going through the rec and the extensive data
13 request. Both staff and OPC were trying to reach
14 out and get that information from the buyer, and
15 the buyer really kind of failing on that part. The
16 only thing I do -- I hope, though, that, you know,
17 this doesn't discourage the buyer from going
18 through with the sale. I think it's really
19 beneficial to have an, you know, an experienced
20 utility with the resources that you have to come
21 in. So I hope, you know, we -- you continue to
22 want to do business in Florida, even without, you
23 know, if we go ahead and deny.

24 CHAIRMAN FAY: Great. Thank you, Commissioner
25 Passidomo. I just -- I have a few comments. I

1 mean, I echo my colleagues in that the
2 recommendation, I think, addresses the challenge of
3 not having the information at the time. And I
4 think the argument's been made that that's part of
5 acquiring utilities is you don't always have that
6 information. But, as Commissioner Graham has
7 stated, we do have some of those utilities that are
8 in extreme distress and still are able to present
9 enough information for us to then make a decision
10 on what that should be.

11 I think the legal arguments are somewhat
12 persuasive in that I don't see a legal prohibition
13 in the separation, but I just have significant
14 concerns about how that process would look. And
15 what I think is so unique is when we talk about
16 these, the rule for water and wastewater does have
17 these specific variables in how we make the
18 decision, unlike some of the other utilities that
19 we address with this. Some of it is not just
20 basically by precedent, or previous decisions that
21 we've looked at. To me, it's just extremely hard
22 to meet that burden.

23 And so, as Commissioner Passidomo said, I
24 think my experience has been when I look at the
25 water systems in Florida, the acquisition and scale

1 of resources is one of the only solutions to a
2 really challenging industry, and we do not want to
3 discourage that. But when it comes to the numbers,
4 and what technical staff has put forward, I find it
5 hard to see those satisfying what the legal
6 requirements are. And so I think it's absolutely a
7 challenge.

8 I do hope that there'll be consideration going
9 forward with the acquisitions, if the Commission
10 chooses to approve issues one and two on these
11 items, but recognize that's going to have to be
12 part of the decision, a business decision that
13 you'll have to make. And so hopefully, there'll be
14 some, at least certainty, or understanding for what
15 our decision provides for you going forward.

16 So, with that, Commissioner La Rosa, I want to
17 make sure you didn't have anything at this time
18 before I --

19 COMMISSIONER LA ROSA: Thank you, Chairman. I
20 turned my light off because I think a lot of good
21 comments have been said, and I didn't think are
22 necessary. So I'll be very short with this. And I
23 do believe that the standards are there for a
24 reason. I think there's a reason why there is a
25 high standard.

1 You know, at the end of the day, I also do not
2 want to discourage, you know, taking on some of
3 these legacy assets in water and wastewater
4 systems, and they ultimately do need a new
5 purchaser to come in and refresh and turn things
6 around. But I also would agree to the fact that I
7 don't see anything wrong with what's before us, as
8 far as the utilities and how they're operating.
9 And the one element that I paid probably most close
10 attention to was how many complaints were made by
11 customers. And at the end of the day, that is
12 certainly a lead into, is there a problem? Should
13 we be paying attention to something? Should we be
14 focusing? And I just didn't see a number that was
15 overwhelming that made me believe that there was a
16 problem on the ground, so -- but, with that said, I
17 just echo a lot of the same comments that
18 everyone's made here today.

19 CHAIRMAN FAY: Sure. With that --

20 MS. CLARK: Mr. Chairman, I can sort of sense
21 where the vote may be going. I just wanted to ask
22 that there be clarity, but with regard to something
23 Mr. Cox said. A lot of times they get in and they
24 see what the actual investment is, and there may be
25 assets that were not included in rate base that

1 should have been. That would be different from a
2 denial of the acquisition adjustment, that if there
3 was later discovered facts having to do with actual
4 investment, that could be brought up in a rate
5 case, and I think that's been done before.

6 CHAIRMAN FAY: Thank you. With that,
7 Commissioners, I will entertain a motion on, I
8 guess, on all three items, unless someone would
9 like to take one separately. Commissioner Graham.

10 COMMISSIONER GRAHAM: I'd move staff
11 recommendation on Items 5, 6 and 7, all issues.

12 CHAIRMAN FAY: Have a motion. Do we have a
13 second?

14 COMMISSIONER PASSIDOMO: Second.

15 CHAIRMAN FAY: Commissioner Passidomo with the
16 second. With that, Commissioners say aye.

17 (Chorus of ayes.)

18 CHAIRMAN FAY: Nays.

19 COMMISSIONER CLARK: Nay.

20 CHAIRMAN FAY: With that four to one, the
21 recommendation passes. That is Item 5, 6 and 7.

22 And with that, Commissioners, this meeting is
23 concluded. We are adjourned.

24 (Agenda item concluded.)

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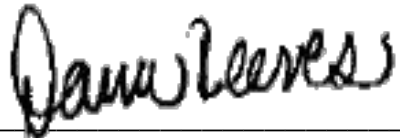
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COUNTY OF LEON)

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DATED THIS 10th day of March, 2022.



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