

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: June 24, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Kelley, Buys, Cicchetti, Cohn, DSa, Higgins, Norris, Souchik, Worrall) *MC*
Division of Economics (Bruce, Hudson) *EDD*
Division of Engineering (Ramirez-Abundez, Ramos, Thompson) *LVK*
Office of the General Counsel (Bloom, Crawford) *JSC*

RE: Docket No. 20250130-WS – Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

Docket No. 20250136-WS – Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

AGENDA: 07/07/26 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested – Participation is at the Commission’s Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Ortega (20250130-WS)
Clark (20250136-WS)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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. The amended version of the rule provides a list of factors that the Florida Public Service Commission (Commission) must 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 with respect to its acquisition of its North Peninsula, Aquarina, and Sunshine systems.¹ CSWR subsequently filed petitions for positive acquisition adjustments under the amended rule, to which the Office of Public Counsel (OPC) filed motions to dismiss, arguing that administrative finality had attached to the Commission's denial of acquisition adjustments at the time the three systems were transferred to CSWR. By Order No. PSC-2025-0250-PCO-WS, the Commission denied OPC's motions to dismiss, finding that administrative finality did not attach and that the new acquisition adjustment rule was not being applied retroactively.² The three acquisition adjustment dockets associated with North Peninsula, Aquarina, and Sunshine are currently pending before the Commission.

At issue in this recommendation are CSWR's requests for a positive acquisition adjustment with respect to its purchase of two additional utilities, Neighborhood Utilities, Inc. (Neighborhood) and Rolling Oaks Utilities, Inc. (Rolling Oaks).

In Commission Docket No. 20220019-WU, CSWR applied for the transfer of Neighborhood, and included a request for a positive acquisition adjustment at the time of the transfer to CSWR under the prior version of Rule 25-30.0371, F.A.C. The Commission approved the transfer but denied the request for a positive acquisition adjustment, stating that the utility failed to demonstrate extraordinary circumstances.³

¹ Order Nos. PSC-2022-0116-PAA-SU, issued March 17, 2022, in Docket No. 20210133-SU, *In re: Application for transfer of facilities of North Peninsula Utilities Corporation and wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County*; PSC-2022-0115-PAA-WS, issued March 15, 2022, in Docket No. 20210093-WS, *In re: Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., water Certificate No. 517-W, and wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County*; and PSC-2022-0120-PAA-WU, issued March 18, 2022, in Docket No. 20210095-WU, *In re: 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*.

² Order No. PSC-2025-0250-PCO-WS, issued June 25, 2025, in Docket Nos. 20250038-WS, *In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC*; 20250043-WS, *In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC*; 20250047-WS, *In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC*; and 20250052-WS, *In re: Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company*.

³ Order No. PSC-2022-0364-PAA-WU, issued October 25, 2022, in Docket No. 20220019-WU, *In re: Application for transfer of water facilities of Neighborhood Utilities, Inc. and water Certificate No. 430-W to CSWR-Florida Utility Operating Company, LLC, in Duval County*.

CSWR purchased Rolling Oaks, located in Citrus County, on December 30, 2021. At that time, Citrus County regulated all water and wastewater utilities in that county which would otherwise be subject to regulation by the Commission, under Section 367.171(8), Florida Statutes (F.S.). By Resolution No. 2022-108, dated November 7, 2022, the Citrus County Board of Commissioners approved the sale and transfer of Rolling Oaks to CSWR. However, the County denied CSWR's request for a positive acquisition adjustment, stating that CSWR failed to demonstrate extraordinary circumstances. Citrus County subsequently returned jurisdiction over its water and wastewater utilities to the Commission,⁴ and the Commission granted CSWR a grandfather certificate with respect to its Rolling Oaks system.⁵

On October 14, 2025, and November 7, 2025, CSWR filed petitions requesting positive acquisition adjustments relating to its purchases of Neighborhood and Rolling Oaks under the amended version of Rule 25-30.0371, F.A.C. These requests were assigned Docket Nos. 20250130-WS and 20250136-WS, respectively. Neither petition referenced the Commission's or Citrus County's prior denials of CSWR's request for a positive acquisition adjustment at the time of the transfers. Rather, the petitions 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 April 30, 2026, the Office of Public Counsel (OPC) filed Motions to Dismiss CSWR's petition for an acquisition adjustment in both the Neighborhood and Rolling Oaks dockets.⁶ In each 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 at the time of transfer.

On May 7, 2026, CSWR filed responses to each Motion to Dismiss (Responses). In its Responses, 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.

Staff's recommendation addresses OPC's Motions to Dismiss CSWR's petitions for acquisition adjustments and CSWR's Responses. No request for oral argument was filed concurrently with either of OPC's Motions to Dismiss under Rule 25-22.0022(7)(a), F.A.C.; however, participation on these items are within the Commission's discretion.⁷ The Commission has jurisdiction pursuant to Sections 367.071 and 367.121, F.S.

⁴ Order No. PSC-2024-0267-FOF-WS, issued July 25, 2024, in Docket No. 20240095-WS, *In re: Resolution of the Board of County Commissioners of Citrus County declaring Citrus County subject of the provisions of Sections 367, F.S.*

⁵ Order No. PSC-2025-0280-PAA-WS, issued July 21, 2025, in Docket No. 20240130-WS, *In re: Application for grandfather certificate to operate water and wastewater utility in Citrus County, by CSWR-Florida Utility Operating Company, LLC.*

⁶ OPC's intervention was acknowledged by Order Nos. PSC-2026-0030-PCO-WS, issued January 27, 2026, in Docket No. 20250130-WS and PSC-2026-0031-PCO-WS, issued January 27, 2026, in Docket No. 20250136-WS.

⁷ Under Rule 25-22.0022(7)(a), F.A.C., oral argument at an Agenda Conference will only be entertained for recommended orders and dispositive motions, such as motions to dismiss. Rule 25-22.022(1), F.A.C., provides that

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oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested. Failure to timely file a request for oral argument constitutes waiver thereof. However, the Commission may request oral argument on matters over which it presides. Rule 25-22.0022(2), F.A.C.

Discussion of Issues

Issue 1: Should OPC's Motions to Dismiss the Neighborhood and Rolling Oaks acquisition adjustment petitions be granted?

Recommendation: No, staff recommends that the Commission deny OPC's Motions to Dismiss the Neighborhood and Rolling Oaks acquisition adjustment petitions. Staff recommends that changed circumstances and the public interest warrant consideration of CSWR's requests for positive acquisition adjustments concerning its Neighborhood and Rolling Oaks utilities. Additionally, staff disagrees with OPC's contention that CSWR is seeking retroactive application of amended Rule 25-30.0371, F.A.C. (Crawford, Bloom)

Staff Analysis:

Law

In the seminal case of *Peoples 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 *Peoples Gas Sys., Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966)).

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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.⁸ 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.⁹ 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.¹⁰ A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.¹¹

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.¹² 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.”¹³

OPC’s Motions to Dismiss

In its Motions to Dismiss the Neighborhood and Rolling Oaks acquisition adjustment petitions, 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. 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. Consequently, OPC believes that administrative finality has attached to CSWR’s requests for positive acquisition adjustments and that the Neighborhood and Rolling Oaks petitions should be dismissed.

CSWR’s Response

In its Responses, 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 transfers at issue. CSWR argues that administrative finality does not attach because rather than asking the Commission to second-guess the earlier denials of the acquisition adjustments, CSWR is instead presenting the Commission with new applications 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

⁸ *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

⁹ *Id.* at 350.

¹⁰ *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2nd DCA 1960).

¹¹ *Barbado v. Green and Murphy, P.A.*, 758 So. 2d 1173 (Fla. 4th DCA 2000).

¹² 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).

¹³ Section 120.569(2)(c), F.S.

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acquisition adjustments were previously denied.¹⁴ 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.

In its Responses, 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 petitions under the new version of the rule. 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 claims that the facts and circumstances have changed since the time of the transfers for the two 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 the systems that had not yet occurred or were not known at the time of the transfers, 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 systems. CSWR asserts that these new facts and changed conditions demonstrate that administrative finality cannot apply to the denied acquisition adjustments for these systems.

CSWR contends that no person has taken any action in reliance on the Commission's or Citrus County's prior denials of the requested acquisition adjustments. In addition, the Utility argues 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 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 contends that the amended rule allows for petitions for acquisition adjustments to be filed within three years of the transfer order and that the 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. 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 notes, as discussed in the Case Background, that the Commission has previously rejected the same arguments that OPC is making in the instant cases for Neighborhood and Rolling Oaks.

¹⁴ 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 Wedgefield 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).

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On April 17, 2025, OPC moved to dismiss three CSWR acquisition adjustment petitions with respect to CSWR's North Peninsula, Aquarina, and Sunshine systems, on the same grounds asserted in the present motions. By Order No. 2025-0250-PCO-WS, the Commission denied OPC's motions to dismiss the three petitions, finding that administrative finality did not attach and that the new acquisition adjustment rule was not being applied retroactively.¹⁵

Staff Analysis

For the reasons set forth below, staff recommends that OPC's Motions to Dismiss should be denied, and CSWR should be allowed to proceed with the instant petitions for acquisition adjustment for Neighborhood and Rolling Oaks.

A. Interpretation of Rule 25-30.0371, F.A.C.

Although not presented as an argument by OPC, staff notes that a strict reading of Rule 25-30.0371, F.A.C., would lead to the conclusion that CSWR's purchase of Rolling Oaks is not eligible for a subsequent acquisition adjustment. Subsection 2 of the rule provides that "[a] utility may seek approval of a positive acquisition adjustment at the time the utility seeks approval to transfer the certificate of authorization or anytime within 3 years of the issuance date of the *Commission order* approving the transfer of the certificate of authorization." (emphasis added.) For the Rolling Oaks system, the order approving the transfer was issued by the Citrus County Board of Commissioners, not the Commission, thus no *Commission order* approving the transfer exists. As a general proposition, in interpreting administrative rules, words should be given their plain and ordinary meaning. *Gar-Con Dev., Inc. v. State, Dept. of Env'tl. Reg.*, 468 So. 2d 413 (Fla. Dist. Ct. App. 1985) (citing *State, Dept. of Health and Rehab. Services v. McTigue*, 387 So. 2d 454 (Fla. Dist. Ct. App. 1980)). If this were the case, then CSWR's petition regarding Rolling Oaks in Docket No. 20250136-WS should be dismissed for failing to comply with a plain reading of the rule. Such a dismissal would be with prejudice, because it conclusively appears from the face of the petition that the defect cannot be cured.

However, staff believes the rule can be reasonably read to interpret that the three years run from the date an appropriate regulatory body issues an *order* approving the transfer of a water or wastewater system, and that a utility should not be penalized for the subsequent transfer in regulatory jurisdiction, as occurred for Rolling Oaks in Citrus County.

B. Administrative Finality

Staff does not believe that administrative finality has attached to CSWR's previously denied positive acquisition adjustments. CSWR has adequately demonstrated both a significant change of circumstances and that it is in the public interest for the Commission to proceed on the instant petitions for positive acquisition adjustments.

¹⁵ Order No. PSC-2025-0250-PCO-WS.

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1. Significant Change of Circumstances

Staff agrees with CSWR that facts and circumstances have significantly changed since the time of transfer for the Rolling Oaks and Neighborhood systems for which a positive acquisition adjustment is requested. Staff particularly notes CSWR's allegations regarding the extreme level of deterioration at these systems' facilities, the work needed to come into environmental compliance, and the impact of the former owners' insolvency on the operation of these systems. The details of these conditions were not known at the time the Commission or Citrus County previously denied CSWR's requests for positive acquisition adjustments for these systems. Therefore, staff disagrees with OPC's contention that the only change in circumstances since the previous applications is the amendment to the acquisition adjustment rule, and believes that CSWR has adequately demonstrated a change in circumstances sufficient to allow consideration of an acquisition adjustment for these systems under the amended rule.

2. Public Interest

In addition to changed circumstances, staff also believes that it is in the public interest to allow CSWR's requests for acquisition adjustments to go forward. Positive acquisition adjustments create an incentive for larger, more sophisticated entities to purchase struggling, non-viable water and wastewater systems. Staff believes that these types of transfers benefit customers because they inject much-needed capital into their water and wastewater systems to improve both water quality and customer service. Additionally, such transfers may provide the benefits of economies of scale and promote operational and financial stability in otherwise struggling, non-viable systems. Staff therefore believes that it is in the public interest to allow CSWR to go forward with its requests for positive acquisition adjustments for these two systems.

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

Staff disagrees with OPC's contention that CSWR is seeking retroactive application of amended Rule 25-30.0371, F.A.C. Rather than a substantive rule change, staff believes that the amended rule merely provided a procedural clarification of the previous rule. Furthermore, instead of seeking retroactive rule application, CSWR is making fresh applications under the amended rule. The amended rule allows utilities to come in any time within three years of transfer of systems to request an acquisition adjustment. CSWR has come in within the three-year window and therefore should qualify for relief under the amended rule.

Conclusion

For the reasons stated above, staff recommends that the Commission deny OPC's Motions to Dismiss. Staff believes that changed circumstances and the public interest warrant consideration of CSWR's instant petitions for positive acquisition adjustments for Neighborhood and Rolling Oaks. Additionally, staff disagrees with OPC's contention that CSWR is seeking retroactive application of amended Rule 25-30.0371, F.A.C. Whether the petitions for positive acquisition adjustment should be approved will be addressed in a later staff recommendation.

Issue 2: Should these dockets be closed?

Recommendation: Docket Nos. 20250130-WS and 20250136-WS should remain open to allow the Commission to address CSWR's requested acquisition adjustments for Neighborhood and Rolling Oaks. (Crawford, Bloom)

Staff Analysis: Docket Nos. 20250130-WS and 20250136-WS should remain open to allow the Commission to address CSWR's requested acquisition adjustments for Neighborhood and Rolling Oaks.