BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.	DOCKET NO. 20240068-WS FILED: June 23, 2025

CITIZENS' MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, by and through the Office of Public Counsel ("OPC"), pursuant to Rule 25-22.060, Florida Administrative Code ("F.A.C."), hereby request the Florida Public Service Commission ("FPSC" or "Commission") to reconsider its decision in Order No. PSC-2025-0196-FOF-WS, issued on June 6, 2025 ("Final Order"). In support, Citizens provide the following:

I. Standard of Review for Motion for Reconsideration

The standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order.[1] In Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817, 818-819 (Fla. 1st DCA 1958)), the Third District Court of Appeal stated:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law **even though discussed in the brief or pointed out in oral argument** will be inadvertently overlooked in rendering the judgment of the court.

[1] Order No. PSC-2006-0949-FOF-EI, issued Nov. 13, 2006, p. 1, Docket No. 20060001-EI, *In re*: Fuel and purchased power cost recovery clause with generating performance incentive factor; Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

(Emphasis added). Recently, in Citizens of State v. Clark, 373 So. 3d 1128, 1131 (Fla. 2023), the Florida Supreme Court further found:

> One specific preservation principle comes into play when a final order addresses substantive issues or reaches legal conclusions that have not been previously raised or challenged. If this occurs, a party must file a motion for rehearing to preserve those alleged errors for appellate review.

In the Citizens case, the Court held that the alleged legal errors first appeared in the order. The Court found that when OPC withdrew the motion for reconsideration, it failed to give the Commission "a fair opportunity to correct the alleged errors raised in the motion."[2] Thus, the Court stated that this failure constrained their review--that is, they could only reverse if those errors rose to the level of fundamental error.[3]

While a motion for reconsideration should be used sparingly, in this instance it is necessary to provide the Commission a fair opportunity to address facts and law that the Commission overlooked or failed to consider or substantive issues or legal conclusions that were not previously raised or challenged. To the extent that OPC may pursue further review of the issues in this motion or any other issues in the Order, OPC maintains and does not waive any appellate rights despite not addressing such other issues here.

II. Background

a. Initial Application

On June 28, 2024, Sunshine Water Services Company ("Sunshine" or "Company") submitted its application to the Commission for an increase in its water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties,

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[2] Id. at 1132.

[3] The Court did not discount the significance of the issues raised by OPC, but the Court's refusal to exempt OPC's arguments from the preservation requirements stemmed from the Court's commitment to the critical interests served by preservation and the structural limitations on the scope of their appellate review of lower tribunal decisions. Citizens, 373 So. 3d at 1132.

Florida.[4] As a Class A utility, Sunshine included with its application the minimum filing requirements ("MFRs") required by Rules 25-30.436 and 25-30.437, Florida Administrative Code ("F.A.C."). On July 26, 2024, the Commission's Staff sent Sunshine a letter indicating deficiencies in the filing of its MFRs.[5] Sunshine then filed a deficiency response letter that cured its deficiencies on August 1, 2024.[6]

b. Sunshine's MFRs

As part of its original and revised MFRs, Sunshine included information necessary to calculate its rate base. This information included an adjustment annualizing depreciation expense and associated accumulated depreciation for plant additions that were placed into service at various points from January 2, 2023 to December 31, 2023 of the test year. As argued by OPC in its posthearing brief, this adjustment violated Rule 25-30.433(5), F.A.C., which states:

> The averaging method used by the Commission to calculate rate base and cost of capital ***shall be*** a 13-month average for Class A utilities and the simple beginning and end-of-year average for Class B and C utilities.

In contrast to its treatment of the annualized depreciation expense, the associated test year additions that Sunshine used to calculate rate base, including utility plant-in-service, were presented in the MFRs using the 3-month average basis required by this Rule. Sunshine did not annualize any other component of rate base, including plant-in-service. As argued by OPC in its posthearing brief, by annualizing depreciation expense and associated accumulated depreciation while using a 13-month average to calculate every other component of rate base, the Company

[4] Document No. 07024-2024, PSC Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.
[5] Document No. 07951-2024, PSC Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.
[6] Document No. 08382-2024, PSC Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.

failed to follow Rule 25-30.433(5), F.A.C., and, in doing so, impermissibly created a mismatch between depreciation and plant.

Sunshine's MFRs also included calculations for its requested weighted average cost of capital. The company specifically identified its customer deposits, accumulated deferred income tax credits ("ITCs"), deferred income taxes, and other deferred tax liabilities related to the Tax Cuts and Jobs Act. The Company did not request any *pro rata* adjustments to any of these items. Based in relevant part on the foregoing, the Company requested an average weighted cost of capital of 7.478%.

c. Pre-Hearing and Hearing

After a pre-hearing conference in which the parties discussed issues, the hearing officer issued a Prehearing Order on February 6, 2025.[7] The Prehearing Order includes a list of issues to be considered in the case and the parties' positions on such. Issue 13 was phrased as "Should any adjustments be made to test year accumulated depreciation?" Sunshine only reiterated the contents of its application, while OPC asserted that depreciation on test year plant should be at the 13-month average test year amounts, not on year-end annualized amounts.[8] With regard to cost of capital, Issue 23 was phrased as "What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure?" Sunshine responded "7.493%" based on Sunshine witness Deborah Swain's testimony, while OPC referred to its own witness' pre-filed testimony.[9] Staff indicated it had no position on either issue, and the wording of these issues went forward to the hearing.[10]

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[7] Order No. PSC-2025-0042-PHO-WS, issued Feb. 6, 2025, Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.
[8] *Id.* at 11.
[9] *Id.* at 14.
[10] *Id.* at 11 and 14.

The formal evidentiary hearing was held February 11-13, 2025. OPC and Sunshine filed post-hearing briefs on March 14, 2025. In their hearing testimony and briefs, OPC and Sunshine presented testimony and evidence in line with the above discussion. For its part, Staff presented two witnesses and their pre-filed testimony at the hearing. Staff's testimony was limited to the audit conducted by Staff and the number of consumer complaints logged with the Commission against Sunshine.

d. Post-Hearing

After the parties' participation in this matter was closed, Staff issued its post-hearing recommendation on April 24, 2025.[11] In relevant part, Staff deviated from standard practice by recommending approval of Sunshine's adjustment annualizing depreciation expense and associated accumulated depreciation despite such being contrary to Rule 25-30.433(5), F.A.C. Staff then, unilaterally, also recommended increases of $3,918,720 and $8,285,365 to the test year plant-in-service balances for water and wastewater, respectively. According to Staff, these adjustments were intended to "reflect corresponding adjustments to annualization" of accumulated depreciation.[12]

Staff also unilaterally recommended adjustments with regard to the appropriate weighted average cost of capital. Specifically, Staff recommended *pro rata* adjustments to customer deposits, accumulated deferred ITCs, deferred income taxes, and other deferred tax liabilities, instead of specifically identifying these items as the Company requested in its MFRs and as Commission has consistently done for the Company previously. These particular adjustments were

[11] Document No. 03126-2025, PSC Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.
[12] *Id.* at 23.

the essential drivers that increased Sunshine's weighted average cost of capital from its requested 7.493% to 7.70%.[13]

Neither the parties nor Staff presented evidence or testimony regarding or supporting annualizing plant-in-service or making *pro rata* adjustments for all sources of capital instead of just the investor sources of capital (while retaining the impact of the specific balances customer deposits, accumulated deferred ITCs, deferred income taxes, and other deferred tax liabilities) used to calculate weighted average cost of capital (collectively referred to as "adjustments"). Sunshine itself did not request these adjustments in its application or MFRs. The first time OPC had any opportunity to even know Staff was contemplating these adjustments was when Staff filed its recommendation on April 24, 2025, which was over two months after the hearing was concluded on February 12, 2025, after which point OPC's participation was barred. Staff's own witnesses who testified at the hearing did not make mention of these adjustments. The adjustments were also not contemplated in the issue list contained in the Prehearing Order.

These adjustments had a significant upward impact on Sunshine's revenue requirement despite no party having an opportunity to present evidence on or dispute them. OPC calculates that annualizing depreciation increased Sunshine's revenue increase by $490,475 collectively for water and wastewater. Staff's annualized water and wastewater plant adjustments increased total Company plant by $12,204,085 which increased Sunshine's collective water and wastewater revenue by $1,229,246. Finally, Staff's *pro rata* adjustments to all sources of capital to calculate weighted average cost of capital increased Sunshine's water and wastewater revenue increase by $556,716. These unsupported "out-of-the-blue" adjustments cumulatively unjustly benefit the

[13] *Id.* at 74.

utility, and burden Sunshine's customers, by $2,276,436 in increased collective revenue requirement across both water and wastewater.

These increases represent approximately 25% of the Commission's approved total revenue increases across Sunshine's water and wastewater. They will have tremendous adverse financial impacts due to the nature of the customers who reside in these small, modest communities that comprise this collection of small water and wastewater systems whose aged infrastructure is past its prime. It is important to note that these unjust increases imposed by Staff upon ratepayers will continue to snowball each year should these adjustments become baked permanently.

At issue is also the manner in which Staff presented its recommendation, which excised the section on the parties' arguments The argument portions of Staff recommendations previously occupied the central portion of the analysis for each contested issue. Perusal of staff's prior recommendations for these issues, for this company and its precursors, demonstrates the importance of the parties' arguments portion of the recommendation which are inexplicably absent here.[14] From the cited recommendations, the "meat" of Staff's Analysis can be observed going back almost a decade. By contrast, Staff's recommendation contains only pithy excerpts without addressing the missing content or the reason the parties arguments were excised.

e. Agenda Conference

On May 6, 2025, the Commission convened to deliberate on and decide Sunshine's rate case outcome. Participation at the agenda conference on Staff's recommendation was "[l]imited to Commissioners and Staff;"[15] therefore, OPC was not allowed to object at the time the Commission

[14] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, Docket No. 20200139-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida; Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

[15] Document No. 03126-2025 at 1.

voted on Staff's recommendations. In relevant part, the Commission approved each of Staff's recommendations. Despite the procedural deficiencies in the manner in which Staff chose to recommend these adjustments and their huge impact on Sunshine's revenue requirement, no Commissioner brought up the adjustments for any discussion, nor did Staff explicitly bring the change in policy or departure from Rules to the Commissioners' attention. The Commission issued its Final Order cementing its decisions on June 6, 2025.[16]

III. Argument

a. The Final Order Addresses Substantive Issues or Reaches Legal Conclusions that Were Not Previously Raised or Challenged and, in Doing So, the Commission Overlooked OPC's Statutory and Due Process Rights

No party was on notice at any point in this matter that the Commission was going to make, *sua sponte*, an adjustment to annualize Sunshine's plant-in-service to "comport" with Sunshine's annualization of accumulated depreciation or that it was going to consider and make *pro rata* adjustments to all sources of capital in calculating Sunshine's weighted average cost of capital. Sunshine itself did not propose these adjustments in its application, initial MFRs, or revised MFRs. No party filed testimony on these adjustments. The adjustments were not included in any of the issues listed in the Prehearing Order. The hearing was devoid of live testimony on the adjustments. The first chance any party had to know that Staff, and ultimately the Commission, was considering these adjustments was when the adjustments appeared from the ether in Staff's recommendation. By that point, the evidentiary hearing in this matter had already occurred.

Not only was such lack of notice unfair to both OPC and Sunshine's customers, it also violated section 120.57(1)(b), Florida Statutes. This section provides that "[a]ll parties shall have an opportunity to respond, to present evidence and argument **on all issues involved**, to conduct

[16] Order No. PSC-2025-0196-FOF-WS, issued June 6, 2025, Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.

cross-examination and submit rebuttal evidence..." (Emphasis added.) Since the parties were not on notice of the issues of comporting plant-in-service to annualized depreciation and prorating all sources of capital, no party had an opportunity to conduct discovery, submit pre-filed or live witness testimony, or conduct cross examination on the appropriateness of these adjustments.

Another reason the parties had no reason to anticipate these adjustments is because they depart from prior commission practice. In Sunshine's two prior rate cases, [17] the Commission approved adjustments annualizing accumulated depreciation, but did not make any corresponding adjustment to annualize plant.[18] In this case, the Commission offered no explanation for this deviation from policy other than to say that the adjustment to annualize plant was to "comport" with Sunshine's adjustment annualizing depreciation. Not only does this fail to explain why the same adjustment was not made previously, the purported explanation makes no sense because no other component of rate base was similarly adjusted to be annualized. This type of bootstrapping an unlawful "comporting" adjustment to attempt to cure the ills of a Company-proposed unlawful adjustment merely deepens the violation of Rule 25-30.433(5), F.A.C.

With regard to prorating all sources of capital to calculate the weighted average cost of capital, the Commission also did not make these adjustments in Sunshine's last two rate cases. For these adjustments, the Commission does try to explain, post-deliberation, the deviation by pointing to two recent cases decided on a proposed agency action basis where this kind of adjustment was made. However, neither of these prior decisions explain why the Commission was departing from

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[17] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, Docket No. 20200139-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida; Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, Docket No. 20160101-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

[18] The fact that these adjustments were made previously does not justify the Commission continuing to ignore its own Rules in the instant matter. If the Commission wishes to make or approve of these kinds of adjustments, it has a remedy: initiate rulemaking to amend the current Rules. OPC's lack of objection is not a defense to the Commission's unlawful actions.

previous practice.[19] The instant decision is also contrary to the Commission's 2024 PAA decision in Docket No. 20230083-WS (which later became final through a consummating order), wherein the utility requested, and the Commission approved, customer deposits being specifically identified instead of a *pro rata* adjustment being made.[20] Finally, there was no discussion of these orders in the Staff recommendation itself or explanation supporting the change in policy. Needless to say, there also wasn't any discussion of this change in policy during the Commission's public deliberation at the time of vote. The only reasoning that can be gleaned from these two orders are the same as what can be gleaned from the instant one: the Commission made these adjustments arbitrarily and without public deliberation, regardless of prior practice.

Further, comparison to the companies in the cited orders, Royal Waterworks, Inc. ("Royal"), and St. Joe Natural Gas Company, Inc. ("St. Joe"), is inappropriate due to the natures of these two companies.[21] Royal's investor sources of capital were solely for Royal and not any sister company. For Sunshine, the investor sources of capital were not only to fund Sunshine's rate base but also for several of Sunshine-sister companies' rate bases in other states. With regards to St. Joe, specific adjustments were made to remove non-regulated operations from its capital

[19] Order No. PSC-2025-0035-PAA-GU, issued January 30, 2025, in Docket No. 20240046-GU, *In re:* Petition for rate increase by St. Joe Natural Gas Company, Inc.; Order No. PSC-2024-0046-PAA-WS, issued February 22, 2024, in Docket No. 20230081-WS, *In re:* Application for increase in water and wastewater rates in Broward County by Royal Waterworks, Inc.

[20] *See* Order No. PSC-2024-0118-PAA-WS, p. 48, issued April 23, 2024, in Docket No. 20230083-WS, *In re:* Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, LLC. This PAA order was issued approximately two months after the Royal Order was issued. In this case, customer deposits were the only non-investor source of capital for Pluris. This Pluris Order was also cited in the instant case for Staff's adjustments to depreciation associated with net salvage percentages of certain plant accounts, but completely disregarded in preserving Sunshine's request of only making *pro rata* adjustments to investor sources of capital.

[21] Unless the capital structure begins with the total amounts for non-investor sources of capital collectively for Sunshine and all applicable sister companies before the pro rata adjustments to all sources of capital are made, the result will have a dilutive impact on the non-investor (customer provided) sources that have significantly lower cost rates: 2% (customer deposits) and zero cost rates for deferred credits and taxes. This unfairly and significantly overstates the weighted average cost of capital and revenue requirement.

structure. Before reconciliation to rate base, St Joe's adjusted investor sources capital were to fund its regulated rate base and not several sister companies in other states like Sunshine.

The Commission does not meet its burden to explain its deviation from prior practice by pointing to two prior instances where it also deviated without explanation. This is especially true when the comparisons cited were inappropriate to boot. Based on these facts, the Commission exercise of discretion in making these adjustments violated section 120.68(7)(e)3. by deviating with officially stated agency policy or a prior agency practice without explanation.

The Florida Supreme Court has stated that "[t]he fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard." Fla. Pub. Serv. Comm'n v. Triple "A" Enters., Inc., 387 So. 2d 940, 943 (Fla. 1980) (citing Ryan v. Ryan, 277 So. 2d 266 (Fla. 1973). This case involves a due process violation that occurred when a fact finder *sua sponte* raised and ruled on an issue after an evidentiary hearing, which is analogous to Fla. Dep't of Health v. Chun, 401 So. 3d 629 (Fla. 1st DCA 2025). In Chun, the parties jointly stipulated to the admissibility of a piece of evidence, which the hearing officer then admitted into evidence. In the recommended order, the ALJ found that the already-admitted joint exhibit was both unauthenticated and hearsay. As a result, "the ALJ concluded that the Department failed to prove that Chun violated section 456.072(1)(c) and recommended that the Board dismiss the administrative complaint." The relevant Board then "held a disciplinary hearing and entered a final order adopting the ALJ's recommended order and dismissing the matter." *Id.* at 631. In remanding the case, the First District Court of Appeal found that the ALJ committed a material error when the ALJ, after the close of the hearing, *sua sponte* raised and ruled on the admissibility of the joint exhibit without giving the parties notice or an opportunity to be heard. *Id.*

The Commission had multiple chances to put the parties on notice that it was considering these adjustments. Staff conducted an informal meeting with the parties on December 19, 2024, to discuss its proposed issue list.[22] Staff did not raise these adjustments as potential issues during the meeting and took no position on any issues before the hearing.[23] Staff also could have also submitted pre-filed testimony on the adjustments as it submitted pre-filed testimony concerning the Staff audit and complaints about Sunshine submitted to the Commission. Unfortunately, Staff failed to take advantage of these opportunities. The Commission then baked Staff's failures into the Final Order when it approved these adjustments without any discussion.[24] These material errors in procedure or failure to follow prescribed procedure also impaired the fairness of the proceeding in violation of section 120.68(7)(c), Florida Statutes.

The adjustments the Commission made to annualize plant and prorate certain items used to calculate Sunshine's weighted average cost of capital violated the parties' constitutional right of due process. They also represent departures from chapter 120, Florida Statutes. The Commission overlooked these points of law and should remove these adjustments upon reconsideration and recalculate the affected items.

b. The Commission Overlooked the Parties' Due Process Rights by Incorporating Staff's Argument-Free Recommendation Into its Final Order

[22] Document No. 10139-2024, PSC Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.

[23] Order No. PSC-2025-0042-PHO-WS, issued February 6, 2025, Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.

[24] Order No. PSC-2025-0196-FOF-WS, issued June 6, 2025, Docket No. 20240068-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.

For years,[25] Staff's recommendations have included detailed summations of the parties' actual arguments.[26] The inclusion of these summaries helped inform the Commission when it came time for the Commissioners to consider matters for a Final Order. Despite this longstanding practice, the parties' arguments were omitted from the recommendation in this case. This omission was then carried over to the Final Order in this matter. The omission likely contributed to the Commissioner's failing to see that the adjustments at issue were never noticed to the parties or discussed prior to Staff's recommendation. Further, final orders "should provide at least some written assessment of the parties' main disagreements reflected in the record…" Floridians Against Increased Rates, Inc. v. Clark, 371 So. 3d 905, 913 (Fla. 2023). Neither the recommendation nor the Final Order offered any explanation for Staff departing from this establishing practice. By omitting detailed summations of the parties' arguments, the Commission violated section 120.68(7)(e)3. by deviating with officially stated agency policy or a prior agency practice without explanation.

c. The Commission Overlooked Rules 25-30.436 and 25-30.433, F.A.C., by Allowing Sunshine to Annualize Depreciation and then Making the Agency's Own Adjustment to Annualize Plant-in-Service

In addition to the procedural deficiencies outlined above, the Commission also overlooked its own Rules in making these adjustments. Rule 25-30.436(5)(f), F.A.C., requires water and wastewater utilities applying for a rate increase to follow the provisions of Rule 25-30.433, F.A.C., in preparing their application. As discussed above, Rule 25-30.433(5), F.A.C., requires the method used by the Commission to calculate rate base and cost of capital to be a 13-month average for Class A utilities. Sunshine departed from these rules by including an adjustment annualizing

[25] *See, e.g.*, Document No. 10650-2009, issued October 19, 2009, Docket No. 20080677-EI, *In re:* Petition for increase in rates by Florida Power & Light Company.

[26] *See, e.g.*, Staff's recommendation in Sunshine's last rate case: Document No. 03293-2021, issued April 8, 2021, Docket No. 20200139-WS, *In re:* Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

accumulated depreciation. The Commission then condoned and joined into Sunshine's rule violations by itself annualizing plant-in-service to "comport" with Sunshine's accumulated depreciation adjustment.

The Commission's apparent justification for its rule departure is that these adjustments are pro-forma adjustments and therefore within the scope of Rule 25-30.433(5), F.A.C. However, the Rule does not contemplate adjustments, pro forma or otherwise. The Rule requires that calculating rate base must be based on a 13-month average, period. Characterizing an adjustment as a pro forma adjustment does not allow the agency to evade the plain meaning of this Rule.

Based on the foregoing, the Commission should remove adjustments to annualize accumulated depreciation and plant-in-service and recalculate all affected items.

IV. Errors in the Calculations for the Revenue Requirement in the Final Order

In the interest of full transparency, Citizens has identified errors in the calculations for the revenue requirement in the Final Order. An explanation of these calculation errors is fully set forth in Attachment A to this motion.

V. Conclusion

By making adjustments that increase Sunshine's revenue requirement by over $2.2 million without notice to the parties and in violation of its own Rules, the Commission has violated the parties' due process rights and impacted the fairness of the proceedings in this matter. These departures are to the detriment not only to the parties' rights, but Sunshine's customers. The Commission should remove these adjustments and recalculate the affected items appropriately.

OPC has conferred with Sunshine for its position on this Motion. Sunshine opposes the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 23rd day of June, 2025, to the following:

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Attachment A

Citizens believes it has found errors in the calculations for the water and wastewater revenue requirements in the Final Order. These errors appear to have occurred because the calculations of property taxes for the Commission's changes to proforma plant amounts do not reflect reductions the 4% discount consistent and with how Sunshine calculated property taxes on MFR Schedule B-3, Page 6 of 7, Line 32, as well as well as the Commission's practice of treating forfeited discounts below-the-line. Please see explanation below for a detail account of how this occurred.

Specifically, Citizens received the Excel files of the Commission Staff's post-hearing revenue requirements calculations. The Excel file named "Copy of Copy of J Sunshine APRIL 7 FINAL" was received via email on April 25, 2025. In this file on the "ADJ" tab, Cells D96 and E96 reflect the corresponding property tax adjustment to the Commission's adjustments to the Utility's requested proforma plant amounts. Cells D96 and E96 of the "AD" tab contain the formulas of "='ENG PF'!AE13" and "='ENG PF'!AE21", respectively. Cells AE13 and AE21 on the "ENGPF" tab contain the formulas "=SUM(AE4:AE12)" and "=SUM(AE15:AE20)", respectively. The formulas for Cell Ranges AE4:AE12 and AE15:SE20 consist of certain amounts from Cell Range AH28:AH58. The amounts in Cell Range AH28:AH58 were derived by taking the net proforma plant difference from the Commission and Sunshine in Cell Range AC28:AC58 and multiplying them by the respective millage rates in Cell Range AG28:AG58. The errors in these formulas is they failed to account for the 4% discount consistent and with how Sunshine calculated property taxes on MFR Schedule B-3, Page 6 of 7, Line 32, as well as well as the Commission's practice of treating forfeited discounts below-the-line.

To correct for these errors, one must simply multiply the amounts in Cells D96 and E96 of the "AD" tab by ".96". When doing so, the amounts in Cells D96 and E96 the amounts are $17,824 and $20,167, respectively, which represent decreases from the Commission's amounts of $743 and $840, respectively. The downward revenue requirement adjustments are $778 and $880, respectively.