

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

**CSWR-FLORIDA’S RESPONSE IN OPPOSITION TO CITIZENS’
MOTION TO DISMISS CSWR-ROLLING OAKS’
PETITION FOR AN ACQUISITION ADJUSTMENT**

On November 7, 2025, CSWR-Florida Utility Operating Company, LLC (“CSWR-Florida”) filed a petition for an acquisition adjustment (“Petition”) relating to its 2022 acquisition of the Rolling Oaks Utilities, Inc. water and wastewater systems. This docket is on a proposed agency action track and the Petition is currently scheduled to be considered by the Commission at its agenda conference on August 4, 2026.

On April 30, 2026, the Office of Public Counsel (“OPC”) filed a Motion to Dismiss the Petition (“Motion”). The Motion argues that the doctrine of administrative finality prohibits the Commission from deciding the Petition on its merits because in 2022, in the docket by which the Citrus County Board of County Commissioners (“Citrus Board”) authorized the transfer of the Rolling Oaks water and wastewater systems to CSWR-Florida, the Citrus Board denied CSWR-Florida’s request for an acquisition adjustment after applying the former version of the Commission’s acquisition adjustments rule then in effect.¹

In three other pending dockets CSWR-Florida has taken the same position espoused in this response, that an acquisition adjustment can be requested more than once, and the Commission has agreed with CSWR-Florida. The Commission has previously considered, and rejected, the specific arguments OPC raises in its Motion. CSWR-Florida has five acquisition adjustment

¹ In this response, the “Commission” refers to the Florida Public Service Commission and the “Citrus Board” refers to the Citrus County Board of County Commissioners.

dockets pending. On April 17, 2025, OPC filed a motion to dismiss three of them.² OPC made the same argument that administrative finality precluded the Commission from deciding the petitions on their merits. On June 25, 2025, the Commission denied OPC's motion, concluding administrative finality did not apply, CSWR-Florida demonstrated a significant change of circumstances, it was in the public interest for the Commission to decide the petitions on their merits, and there was no impermissible retroactive application of the revised rule.³ Moreover, in prior dockets unrelated to CSWR-Florida, OPC has taken the same position as CSWR-Florida takes in this response, that acquisition adjustments can be requested multiple times, and the Commission has agreed. Commission precedent has consistently been that the denial of an acquisition adjustment during the transfer process does not preclude the subsequent grant of an acquisition adjustment. The OPC's Motion ignores this precedent, is otherwise without basis, and must be denied.

BACKGROUND

In 2021, CSWR-Florida reached an agreement with Rolling Oaks Utilities, Inc. to acquire its water and wastewater systems. The Rolling Oaks systems are located in Citrus County. At that time, Citrus County was a non-jurisdictional county. Its water and wastewater utilities were regulated by the Citrus County Water and Wastewater Authority and the Citrus Board. On July 13, 2022, CSWR-Florida applied to Citrus County for the transfer of the Rolling Oaks water and wastewater certificates of authorization and requested a positive acquisition adjustment applying

²*In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.*, Docket No. 20250038-WS; *In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.*, Docket No. 20250043-WS; and *In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.*, Docket No. 20250047-WS.

³ Order No. PSC-2025-0250-PCO-WS, Issued June 25, 2025.

the version of the Commission’s acquisition adjustments rule, 25-30.0371, F.A.C., then in effect. Citrus County regulated its water and wastewater utilities pursuant to the Citrus County Water and Wastewater Utilities Regulatory Ordinance.⁴ Citrus County used Commission rules as a gap filler pursuant to Section 102-259(a) of the County’s Ordinance (“Miscellaneous Provisions”), which provides in part:

All of the substantive criteria, requirements and provisions which the authority and the board are required to follow in making any decision as provided for under this article and/or rules of the board, whether or not expressly stated in each such criteria, requirement, provision or rule, as being applicable to the authority and/or the board, shall be binding upon the authority and the board in making and issuing decisions and orders on all matters. If the issue is not covered by any such criteria, requirement, provision or rule, refer to the rules of the FPSC as then published in the Florida Administrative Code.

(underlining added) As the County did not have its own acquisition adjustments rule, the Commission’s acquisition adjustments rule applied. On November 7, 2022, the Citrus Board adopted its Resolution 2022-108, by which it approved the transfer of the Rolling Oaks systems to CSWR-Florida and found, relating to the acquisition adjustment requested by CSWR-Florida:

The requested positive Acquisition Adjustment (addition to rate base) associated with the franchise sale and transfer is denied since the CSWR-Florida did not demonstrate the need for an adjustment due to extraordinary circumstances.

The Citrus Board applied the Commission’s prior version of the acquisition adjustments rule, 25-30.0371, F.A.C., with its “extraordinary circumstances” standard and denied CSWR-Florida’s request for a positive acquisition adjustment.⁵

CSWR-Florida was regulated by Citrus County relating to the Rolling Oaks systems for less than two years. On May 28, 2024, the Citrus Board rescinded its jurisdiction over water and

⁴ Citrus County Ordinance 99-07.

⁵ Citrus County Resolution 2022-108 is attached as Exhibit 1 to CSWR-Florida’s Petition for an acquisition adjustment, filed on November 7, 2025.

wastewater utilities in the County, making Citrus County a PSC jurisdictional county once again.⁶ CSWR-Florida applied to the Commission for grandfather certificates of authorization relating to the Rolling Oaks system, which were issued on July 21, 2025.⁷

Between 2002 and 2024, “extraordinary circumstances” was the standard in the Commission’s rule for granting a positive acquisition adjustment. Over those 22 years, no transfer of a water or wastewater system was found by the Commission to present “extraordinary circumstances” and no positive acquisition adjustment was allowed. The rule was in essence illusory.

The “extraordinary circumstances” standard was replaced with a new version of the acquisition adjustments rule, 25-30.0371, F.A.C., that took effect on June 17, 2024. Under the new version of the rule, the Commission is to allow an acquisition adjustment if the system meets the rule’s definition of a “non-viable” system, the acquisition was an arms-length transaction, and customers benefit from the acquisition. The new version of the rule allows for a petition for an acquisition adjustment at the time of the transfer application or within three years of the transfer order, which three-year period can be extended for good cause. Rule 25-30.0371(2), F.A.C.

On November 7, 2025, under the new version of the rule, CSWR-Florida filed its Petition for an acquisition adjustment relating to its 2022 acquisition of the Rolling Oaks water and wastewater systems. The Petition was timely filed under the new version of the rule because it was filed within three years after the Citrus Board’s transfer order was issued on November 7,

⁶ On July 25, 2024, the Commission by Order No. PSC-2024-0267-FOF-WS in Docket No. 20240095, acknowledged the County’s relinquishment of jurisdiction.

⁷ Docket No. 20240130, Order No. PSC-2025-0280-PAA-WS. Consummating Order No. PSC-2025-0303-CO-WS was issued on August 12, 2025.

2022. This is a new Petition to the Commission under the new version of the rule, not a request to revisit or reconsider any action of the Citrus Board.

In its Motion, OPC suggests two theories under which CSWR-Florida's Petition should be dismissed. First, OPC says the Petition is precluded under the doctrine of administrative finality. Because the Citrus Board denied an acquisition adjustment to CSWR-Florida in the County's transfer docket applying the prior version of the Commission's rule, OPC argues that the Commission is now barred as a matter of law from deciding the Petition on its merits under the new version of the rule. Second, OPC argues that CSWR-Florida is applying the revised acquisition adjustments rule retroactively and that the Commission cannot apply the rule as revised in 2024 to a transfer that occurred in 2022. The doctrine of administrative finality does not apply and CSWR-Florida is not attempting to impermissibly apply the new version of the rule retroactively.

MEMORANDUM OF LAW

Commission precedent, arising from prior positions of OPC in dockets unrelated to CSWR-Florida, is that acquisition adjustments can be requested multiple times. This is the opposite of the positions taken by OPC in its Motion, in which it does not mention its own history on this issue. In a 1992 rate case involving Jasmine Lakes, a water and wastewater utility, the Commission imposed a negative acquisition adjustment at OPC's request, after first denying OPC's request for a negative acquisition adjustment in the transfer docket years earlier:

It is the utility's position that no negative acquisition adjustment should be included in rate base. The utility argues that this Commission previously disallowed inclusion of a negative acquisition adjustment for the utility in PAA Order No. 23728, issued November 7, 1990, which became final and effective without protest. The utility further argues that the record in this case is devoid of evidence that extraordinary circumstances existed at the time of transfer.

OPC witness Dismukes testified that a negative acquisition adjustment of \$17,753 should be included in rate base. To support this position, OPC cites utility witness Dreher's testimony that the utility was in bad shape prior to purchase, that the utility had not been maintained in seven years, and that the previous owner had neglected the utility for a long time. OPC witness Dismukes concluded that recognition of this cost/book value difference should be made. OPC further argues that recognition of this difference would insulate the ratepayers from failures or negligence by the prior utility management.

We agree with OPC. The facts of this case are such that even though this Commission did not include an acquisition adjustment to rate base in the transfer docket, Docket No. 900291-WS, we find that it is patently unfair and unjust to the customers of this utility, for the investors to receive a return on that portion of the original purchase price that was less than rate base. . . . Based on the foregoing, we find it appropriate to adjust rate base to include a negative acquisition adjustment of \$6,495 to water and \$11,258 to wastewater.

In Re: Application for a Rate Increase in Pasco County by Jasmine Lakes Utilities Corp., Order No. PSC-93-1675-FOF-WS, Docket No. 920148-WS, 1993 WL 13649174 (Fla. P.S.C. Nov. 18, 1993).

In a 1999 rate case involving Wedgefield Utilities, Inc., OPC cited the *Jasmine Lakes* order and got the same result. OPC was allowed to litigate an acquisition adjustment twice, once in the transfer docket where it was denied, then again in a rate case. Twice the Commission denied Wedgefield's motions for summary final order or to strike OPC's pleading seeking a negative acquisition adjustment after one had been denied in the earlier transfer docket:

Wedgefield further alleges that the negative acquisition adjustment issue, as well as the factual basis for OPC's Protest and Petition in this case, were fully litigated in the prior transfer proceeding.

. . .
OPC cites Commission precedent in support of their argument that we may change a prior decision on acquisition adjustment.

. . .
In this case, OPC has pending discovery on the issue of negative acquisition adjustment. OPC asserts that it intends to establish through its discovery a change in circumstances sufficient to overcome our previous decision in acquisition adjustment. Therefore, we find that it is premature to decide whether a genuine issue of material fact exists when OPC has not had the opportunity to complete discovery and file testimony.

In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc., Order No. PSC-00-2388-AS-W, Docket No.: 991437-WU (Fla. P.S.C. Dec. 13, 2000) (denying motion for summary final order). Then in a subsequent order:

Finally, Wedgefield argues that because this issue was decided in the transfer docket, the doctrine of administrative finality applies. Wedgefield states that “an underlying purpose of the doctrine of administrative finality is to protect those who rely on a judgment or ruling.” *Reedy Creek Utilities Co. v. FPSC*, 418 So. 2d 249, 253 (Fla. 1982). Decisions of the Commission must eventually pass from its control and become final and no longer subject to modification. Order No. 248989, issued August 29, 2992, in Docket No. 910004-EU.

...

OPC alleges that Commission precedent allows us to change our decision about an acquisition adjustment for a company.

...

Weighing the severity of the remedy sought in the summary final order against the diminutive avoided costs and delay available, we find that the better and more cautious course is to deny the summary final order.

In re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc., Order No. PSC-01-1554-FOF-WU, Docket No. 991437-WU (Fla. P.S.C. July 27, 2001).

In its Motion against CSWR-Florida, OPC inexplicably contradicts its prior positions on this issue and the Commission precedent that acquisition adjustments can be raised and litigated multiple times and that a prior denial does not preclude the future grant of an acquisition adjustment.

I. ADMINISTRATIVE FINALITY DOES NOT APPLY

The seminal case on administrative finality in Florida is *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966). In *Peoples Gas*, the Florida Supreme Court held that the Commission did not have the power to reconsider an order issued four and a half years earlier approving a territorial service area agreement, absent a finding that doing so was in the public interest. Peoples Gas and City Gas had entered into a territorial service area agreement, which was approved by the Commission in 1960. *Id.* at 336. In 1962, Peoples Gas filed a civil action claiming City Gas was

in breach of the contract and seeking specific performance and an injunction against continued violation by City Gas. *Id.* at 337. One of the issues raised was whether the Commission in 1960 had the authority to validate the territorial service area agreement between them in the first place.

While this issue was being litigated in the courts, in 1965 the Commission issued an order to Peoples Gas and City Gas to show cause why the Commission should not withdraw its prior 1960 approval of the agreement because factual circumstances had changed. *Id.* at 337. After a hearing the Commission entered an order rescinding and withdrawing the 1960 order, its approval of the territorial service agreement from five years earlier. *Id.* Notably, the Commission did not find that factual circumstances had changed but instead concluded that the earlier order approving the agreement exceeded the Commission's authority. *Id.* The Florida Supreme Court held that after entering the order approving the service area agreement, the Commission could not go back four or five years later and modify its prior order on the ground that it lacked the authority to enter the order in the first place. *Id.*

The Court concluded that administrative agencies in Florida have inherent power to reconsider final orders which are still under their control but that "this inherent authority to modify is a limited one." *Id.* at 338. The Court first cited *State v. Seaboard Air Line Ry. Co.*, for the proposition that the Commission "may of its own motion or by request correct or amend any order still under its control without notice and hearing to parties interested, provided such parties cannot suffer by reason of the correction or amendment, or if the matters corrected and amended were embraced in testimony taken at a previous hearing." 111 So. 391 (Fla. 1927).

The Court then cited *Leonard Bros. Transfer & Storage Co. v. Douglass*, in which it had held that an order of the Commission could not be considered as amending an earlier order. 32 So. 2d 156 (Fla. 1947). *Leonard Bros. Transfer & Storage Co.* concerned two subsequent

applications for authority to conduct certain hauling operations. The Commission considered the second application after its order on the first application had long been final. The Commission's order on the second application attempted to correct an error in its order on the first application. The Court concluded that "at the time of the hearing on the second application the hearing on the first application had been concluded and all interested parties had accepted the [first Order] . . . it will be considered that the hearing on the first application had become final; that we need only consider the second application, the hearing thereon and [the second Order]." *Id.* at 158. The first order was final and would not be revisited, but it did not preclude a second application on the same subject from being filed and considered.

After discussing these two cases, *State v. Seaboard Air Line Ry. Co.* and *Leonard Bros. Transfer & Storage Co. v. Douglass*, the Florida Supreme Court in *Peoples Gas* continued:

The effect of these decisions is that orders 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 of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. For one thing, although courts seldom, if ever, initiate proceedings on their own motion, regulatory agencies such as the commission often do so. Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, 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. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.

187 So. 2d at 339 (underlining added).

The Commission's order withdrawing its order from five years prior approving the Peoples Gas-City Gas service area agreement "went far beyond any power it has to modify an order previously entered." 187 So. 2d at 339. The Court noted that there were no changed circumstances or demonstrated public need or interest. *Id.* That is, had changed circumstances been present, or if modification of the prior order was in the public interest, then administrative finality would not apply: "the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public . . . after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified." *Id.*

Under *Peoples Gas*, administrative finality may apply when the Commission is asked to revisit a prior order, what the Supreme Court called a "kind of second-guessing" by the Commission. *Id.* at 340. It does not apply to a new application involving different facts and applying different law. Moreover, administrative finality requires reliance on the order by the parties or public. After the Commission approved their territorial agreement, Peoples Gas and City Gas performed under the agreement and litigated whether it had been breached. They acted in reliance on the Commission's approval so vacating that approval five years later would harm their interests. As detailed below, *Peoples Gas* and its progeny support the ability of CSWR-Florida to file new acquisition adjustment petitions under the new version of the acquisition adjustments rule.

A. CSWR-Florida is not asking the Commission to reconsider the prior decision by the Citrus Board.

By its Resolution 2022-108, the Citrus Board denied CSWR-Florida's request for an acquisition adjustment in its Rolling Oaks transfer docket, finding:

The requested positive Acquisition Adjustment (addition to rate base) associated with the franchise sale and transfer is denied since the CSWR-Florida did not demonstrate the need for an adjustment due to extraordinary circumstances.

By this new 2025 docket, CSWR-Florida is not asking the Commission to revisit or "second-guess" the Citrus Board's 2022 decision, in the words of the Court in *Peoples Gas*. This is a new Petition filed with the Commission under the new version of the Commission's rule. The Citrus Board relinquished jurisdiction back to the Commission on May 28, 2024.

OPC's Motion says "it is unclear the amended rule would be available to CSWR regarding Rolling Oaks because Rule 25-30.0371(2) is only available at the time of transfer or 'anytime within 3 years of the issuance date of the Commission order approving the transfer of the certificate of authorization.'" (OPC Motion at ¶ 19) The revised rule applies to CSWR-Florida's current Petition for an acquisition adjustment relating to the Rolling Oaks systems now because Citrus County relinquished jurisdiction in 2024, making the Commission the regulator of the Rolling Oaks systems. Had the Rolling Oaks systems remained under Citrus County jurisdiction, CSWR-Florida could have filed a new petition with the County for an acquisition adjustment under the Commission's revised rule.⁸ Because the Commission now has jurisdiction over the Rolling Oaks

⁸ As discussed above, Section 102-259(a) of the County's Water and Wastewater Utility Regulatory Ordinance provided a gap filler by which Commission rules applied. In part: ". . . If the issue is not covered by any such criteria, requirement, provision or rule, refer to the rules of the FPSC as then published in the Florida Administrative Code." Accordingly, if CSWR-Florida had been regulated by Citrus County after the Commission revised its acquisition adjustment rule in 2024, then CSWR-Florida could have filed a new petition with the County under the revised rule.

systems, CSWR-Florida cannot now go back to the County. Moreover, the rule language OPC quotes relates only to the permissible time for filing a petition under the revised rule. There is no suggestion in the rule, nor does OPC argue in its Motion, that the Commission lacks the authority to apply its 2024 revised rule and decide CSWR-Florida's Petition on its merits. Instead, OPC argues the doctrine of administrative finality precludes consideration of the Petition and that CSWR-Florida seeks improper retroactive application of the revised rule.

Administrative finality does not prohibit an applicant or petitioner from applying for a license or a permit, or an acquisition adjustment, a second time just because it was denied once in the past. A century ago, the Florida Supreme Court held that a license denied by the Railroad Commission did not preclude a subsequent second application. *Matthews v. State ex rel. St. Andrews Bay Transp. Co.*, 149 So. 648, 649 (Fla. 1933) (holding that “[a]n order of the railroad commission . . . while quasi judicial in character, is not res adjudicata of another application of exactly the same nature subsequently filed” and that “[e]very promulgated order of . . . the railroad commission, may be superseded by another order”); *Thomson v. Dept. of Envtl. Reg.*, 511 So. 2d 989, 991 (Fla. 1987) (holding that the department improperly denied a second permit application where the facts had changed from the first application and stating that “[t]he proper rule in a case where a previous permit application has been denied is that res judicata will apply only if the second application is not supported by new facts, changed conditions, or additional submissions by the applicant”); *Felder v. State, Dept. of Mgt. Services, Div. of Ret.*, 993 So. 2d 1031, 1035 (Fla. 1st DCA 2008) (noting “the doctrine of administrative finality is based on principles similar to those supporting collateral estoppel and res judicata, except that its emphasis is on litigants’ need to have confidence in the authority of an administrative order”).

B. The facts and circumstances have changed since the 2022 transfer of the Rolling Oaks water and wastewater systems to CSWR-Florida.

As the Florida Supreme Court held in *Peoples Gas*, “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.” 187 So. 2d at 339. In its Motion, OPC says “[t]he only change in circumstance from CSWR’s previous petition is the 2024 modification of Acquisition Adjustment Rule 25-30.0371, F.A.C.” (Motion at ¶ 16) This is false.

The Rolling Oaks transfer application was filed with Citrus County on July 13, 2022. When it requested an acquisition adjustment as part of the transfer docket, CSWR-Florida did not own or operate the Rolling Oaks systems. The limited information that it had came only from pre-acquisition due diligence. CSWR-Florida’s purchase of the Rolling Oaks systems closed on November 30, 2022. On November 7, 2025, CSWR-Florida filed its Petition for an acquisition adjustment under the new version of the rule and this docket was opened. The 948-page 2025 Petition filed in this docket details facts about the Rolling Oaks systems that had not yet occurred or were not known at the time of transfer in 2022, and it addresses prospective issues, like expense and revenue projections, that were not issues under the prior version of the rule. These include:

- comprehensive post-closing evaluations of both the water and wastewater systems;
- complete replacement of the wastewater treatment plant to comply with modifications mandated by the FDEP in the permit renewal completed prior to acquisition;
- installation of remote monitoring equipment at system wells;
- repair or replacement of water system pumps that were non-functioning or had reached the end of their useful lives;
- installation of back-up power to well pumps to ensure continued operation during power outages;
- extensive repairs to well house structures;
- CSWR-Florida’s extensive actions to repair and upgrade systems;
- The 5-year projected impact of CSWR-Florida’s acquisition of the Rolling Oaks systems on the cost of providing service to customers, operation and maintenance cost savings, and overall economies of scale attributable to CSWR-Florida’s ownership; and
- post-closing rectification of the causes of numerous FDEP violations incurred by the systems under previous ownership.

The 2024 revised version of the acquisition adjustments rule allows acquisition adjustment petitions to be filed up to three years after the transfer order, or even longer for good cause shown. Rule 25-30.0371(2), F.A.C. This recognizes that at the time of transfer all the relevant facts and circumstances relating to the system may not be known or knowable. That is the case with the Rolling Oaks system. Because of “new facts, changed conditions, or additional submissions” relating to the Rolling Oaks system, *see Thomson*, 511 So. 2d at 991, administrative finality cannot apply and the petition must be considered on its merits.

C. The revisions to the acquisition adjustments rule since the transfer of the Rolling Oaks system to CSWR-Florida constitute changed circumstances that preclude the application of administrative finality.

The Commission’s acquisition adjustment rule was rewritten in 2024, deleting the prior “extraordinary circumstances” standard for a new standard based on whether the acquired system is non-viable, the sale was at arms-length, and customers benefit from the acquisition. This change in the rule constitutes changed circumstances precluding the application of administrative finality to CSWR-Florida’s current Petition.

In *Delray Medical Center, Inc. v. State, Agency for Health Care Admin.*, the Fourth District held that the ensuing repeal of an administrative rule constituted changed circumstances such that administrative finality did not apply to a hospital’s second application for a certificate of need. 5 So. 3d 26 (Fla. 4th DCA 2009). In *Delray Medical Center, Inc.*, a hospital applied for a certificate of need in 2003, which was denied. *Id.* at 28. In 2005, the hospital reapplied, the certificate was granted, and challengers took an appeal. *Id.* The challengers’ primary argument was that the second application was subject to administrative finality arising from the denial of the first application. The Court disagreed, first noting that “Florida favors administrative hearings to develop and flesh out the differences between successive administrative applications.” *Id.* at 30.

Between the first and second applications, an administrative rule setting forth the agency's methodology for determining need for new acute care beds was repealed and so need was evaluated differently with the second application. *Id.* The Court said this repeal "altered the legal and evidentiary framework for assessing need for acute care hospital projects" and held that because of this change in the rule by its deletion, and changed factual circumstances, administrative finality did not apply. *Id.* at 30-31. Just as need was evaluated differently with the second application in *Delray Medical Center, Inc.*, acquisition adjustments are now evaluated differently under the new version of the Commission's acquisition adjustments rule, constituting a change of circumstances that precludes administrative finality.

D. No person has taken any action in reliance on the Citrus Board's prior denial of an acquisition adjustment to CSWR-Florida.

A key element of administrative finality is that parties or the public have taken action in reliance on the prior decision following the "terminal point in every proceeding at which the parties and the public may rely on a decision." *Peoples Gas*, 187 So. 2d at 339. In *Peoples Gas*, it was two gas companies that had acted in reliance on the Commission's approval of a territorial agreement between them by performing under the contract. Actions were taken by the parties in reliance on the Commission's decision. Second-guessing that approval five years later would have prejudiced and harmed the parties to that contract, therefore administrative finality applied.

Reedy Creek Utilities Co. v. Fla. Pub. Serv. Comm'n, cited by OPC in its Motion, involved a docket opened by the Commission to investigate the effect of a change in federal law that reduced the tax rates paid by utility companies and other corporations from 48% to 46%. 418 So. 2d 249 (Fla. 1982) This tax reduction could cause utilities to exceed a fair and reasonable return upon their investment and the utilities could be required to refund these revenues to their customers. *Id.* at 251. The Commission ordered Reedy Creek Utilities to refund \$47,833, which order became

final, then three (3) months later issued a “supplementary order” increasing the refund amount to \$93,281. *Id.*

In challenging the increased amount, Reedy Creek argued the earlier lower refund amount was subject to administrative finality and could not be subsequently increased. The Florida Supreme Court disagreed, concluding there had been no action by Reedy Creek in reliance on the first order with the lower refund amount:

An underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling. We find that Reedy Creek did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence.

Id. at 254.

No person has taken any action in reliance on the 2022 denial of an acquisition adjustment relating to the Rolling Oaks system under the former version of the rule. OPC’s Motion cites no action OPC, customers, or anyone else took in reliance on the denial. This alone is a sufficient basis to deny the Motion.

E. An acquisition adjustment is a decision relating to ratemaking, which is never final.

Under the new version of the rule, a petition for an acquisition adjustment is a request “to include some or all of a positive acquisition adjustment in the acquired utility’s rate base.” Rule 25-30.0371(2), F.A.C. As such, whether to grant an acquisition adjustment is a decision directly relating to ratemaking, which can never be final. *Sunshine Utilities v. Florida Public Service Comm’n*, 577 So. 2d 663 (Fla. 1st DCA 1991) (holding “the issue of prospective rate-making is never truly capable of finality”). *Sunshine Utilities* concerned a situation where the Commission issued an order setting the utility’s initial rate base, then four years later noticed that the order contained an incorrect assumption and required the utility to make a refund to customers. *Id.* at 664. The First District held the Commission could go back four years later and correct its error:

Peoples Gas . . . and Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979), recognize an exception to the doctrine of administrative finality where there is a demonstrated public interest. Unlike the issues raised in those cases (authority to approve territorial agreements and the dormancy of transportation certificates), the issue of prospective rate-making is never truly capable of finality.

Id. at 666. As an issue relating to ratemaking, whether to grant an acquisition adjustment is not an issue capable of finality. Denial once does not preclude approval in the future.

F. The public interest favors considering the Petition on its merits as the purpose of the revised rule is to encourage consolidation and acquisition of failing water and wastewater systems.

CSWR-Florida is not asking the Commission to revisit the Citrus Board’s order from 2022 denying an acquisition adjustment under the former version of the Commission’s rule. Accordingly, administrative finality cannot apply. Nonetheless, there is a recognized exception “where there is a demonstrated public interest.” *Sunshine Utilities*, 577 So. 2d at 666. The public interest favors consideration of CSWR-Florida’s Petition on its merits. The acquisition adjustments rule was revised in 2024 to encourage the acquisition and consolidation of smaller water and wastewater systems, especially failing systems in need of rehabilitation. The staff recommendation to approve the revised rule noted that “[i]t was identified at the workshop that [the rule], last amended in 2010, was outdated and in need of modernization in order to prioritize the acquisition of smaller, troubled systems” and that “regulatory requirements [under the revised rule] for a ‘non-viable’ utility mimic the traditional purpose of the rule, to incentivize the acquisition of ‘troubled systems’ that are in financial distress or unable to provide safe service.”⁹ Throughout the history of the former version of the rule, no positive acquisition adjustment was ever granted. The customers of failing systems need to have those systems acquired by responsible

⁹ Document No.: 00875-2024, Docket No.: 20240022-WS (Feb. 22, 2024).

owners and rehabilitated. Hearing acquisition adjustment cases, and granting a positive acquisition adjustment when the standard of the new rule is met, furthers that public interest.

II. CSWR-FLORIDA IS NOT APPLYING THE NEW VERSION OF THE ACQUISITION ADJUSTMENTS RULE RETROACTIVELY

Granting CSWR-Florida an acquisition adjustment under the new version of the rule, 25-30.0371, F.A.C., would not involve retroactive application of a rule. CSWR-Florida's Petition is based on facts relating to the systems as of when the Petition was filed in November, 2025, which Petition includes cost and revenue projections for the next five (5) years. The Petition is not based on a single static event that occurred before the new version of the rule became effective. The new version of the rule allows for petitions to be filed within three years after the transfer order, or longer for good cause shown. This recognizes that the facts relating to the condition of the transferred systems and the impact of the transfer on customers take time to become fully developed and may have changed since the date of the transfer itself.

The fundamental test for retroactivity is whether applying a rule or statute "attaches new legal consequences to events completed before its enactment." *Love v. State*, 286 So. 3d 177, 187 (Fla. 2019) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269–70 (1994)). A rule or statute "does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment." *Id.* Applying the new June 17, 2024, version of the acquisition adjustments rule to CSWR-Florida's current petition does not attach new consequences to a completed event but rather applies the current procedural standards to petitions properly brought before the Commission.

Moreover, the new version of the rule is procedural in nature. Whether a rule or statute may be applied retroactively is determined by whether it is substantive or procedural. "Statutes relating to remedies or modes of *procedure*, which do not create new or take away vested rights,

but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.” *Smiley v. State*, 966 So. 2d 330, 334 (Fla. 2007) (alterations in original). “Substantive law has been described as that which defines, creates, or regulates rights -- ‘those existing for their own sake and constituting the normal legal order of society, i.e., the rights of life, liberty, property, and reputation.’” *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1224 (Fla. 2018). “Procedural law . . . is the form, manner, or means by which substantive law is implemented. . . [and] ‘includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.’” *Id.* at 1224–25.

Here, the substantive rights are shown by the statutes implemented by the acquisition adjustments rule: § 367.071(5), Fla. Stat. (“The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof”); § 367.081(2)(a), Fla. Stat. (“The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. . . .”); § 367.121(1)(a), Fla. Stat. (“ . . . the commission shall have power . . . [t]o prescribe fair and reasonable rates and charges”).

The acquisition adjustments rule implements this statutory authority by establishing the specific process and standards for evaluating acquisition adjustments, a component of rate-setting. Rule 25-30.0371, F.A.C. The new 2024 version of rule 25-30.0371 altered the procedure by which the Commission evaluates eligibility for a positive acquisition adjustment. It changed the evaluative standards, replacing the former “extraordinary circumstances” test with analyses based on the acquired system’s non-viability and customer benefits from the acquisition. Additionally,

the new version of the rule permits utilities to petition the Commission for an acquisition adjustment within three years of transfer approval. Rule 25-30.0371(2), F.A.C. These changes modify the “means and methods” the Commission uses, the “steps by which” the utility seeks cost recovery through the adjustment, and the “method of conducting” the decision-making process, not the underlying substantive right to seek fair rates. *See Love*, 286 So. 3d at 182, 186. Such modifications are a procedural change. *Id.* (concluding that altering the burden of proof standard was procedural); *Russell Corp. v. Jacobs*, 782 So. 2d 404, 405 (Fla. 1st DCA 2001) (finding that an amendment changing which entity decides an issue was procedural because it only altered the means of enforcement).

Moreover, the Florida Supreme Court has clarified that applying new procedural rules often depends on the posture of the case and is not considered impermissibly retroactive. *See Love*, 286 So. 3d at 187. “Because rules of procedure regulate secondary rather than primary conduct, the fact that a new procedural rule was instituted after the conduct giving rise to the suit does not make application of the rule at trial retroactive.” *Id.* at 187 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 (1994)). The relevant “posture” here is CSWR-Florida’s current 2025 Petition for an acquisition adjustment. Rule 25-30.0371 permits CSWR-Florida to file a petition “anytime within 3 years of the issuance date of the Commission order approving the transfer.” Rule 25-30.0371(2), F.A.C. CSWR-Florida timely filed its pending Petition under the June 17, 2024, version of rule 25-30.0371. Applying the current procedural standard within the 3-year timeframe explicitly allowed by that standard constitutes a prospective application of the rule from its effective date. *See Pearlstein v. King*, 610 So. 2d 445, 446 (Fla. 1992) (applying a new procedural time limit from its effective date to pending cases was prospective, not retroactive).

Applying the new version of the rule to a new petition is not a prohibited retroactive application. The Commission should evaluate the Petition on its merits under the standards and procedures set forth in the new version of the rule.

III. OPC HAS RAISED, AND THE COMMISSION HAS REJECTED, THESE SAME ARGUMENTS THREE TIMES BEFORE

CSWR-Florida currently has five pending acquisition adjustment dockets, relating to its acquisitions of the following systems: North Peninsula (20250038), Aquarina (20250043), Sunshine Utilities of Central Florida (20250047), Neighborhood (20250130) and Rolling Oaks (20250136). OPC's current motions to dismiss relate to two of the pending dockets: Neighborhood and Rolling Oaks. However, on April 17, 2025, OPC moved to dismiss the three other pending dockets on the same bases: North Peninsula, Aquarina, and Sunshine Utilities of Central Florida. In those three dockets, OPC raised the same arguments that administrative finality precluded the Commission from adjudicating the petitions on their merits and that CSWR-Florida was impermissibly retroactively applying the revised acquisition adjustments rule.

In a June 25, 2025, Order¹⁰, the Commission denied OPC's motions to dismiss those three petitions, concluding administrative finality had not attached to the previously denied positive acquisition adjustments as there was both a significant change of circumstances and that it was in the public interest to proceed on the merits. The Order provides in part:

We find that administrative finality has not 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 us proceed on the instant petitions for positive acquisition adjustments.

...

We agree with CSWR that facts and circumstances have significantly changed since the time of transfers for all three systems for which a positive acquisition adjustment is requested. We find particularly persuasive the allegations regarding the extreme level of deterioration at these systems' facilities, the work needed to come into environmental

¹⁰ Order No. PSC-2025-0250-PCO-WS.

compliance, and the impact of the former owners' insolvency on the operation of these systems.

...

Positive acquisition adjustments create an incentive for larger, more sophisticated entities to purchase struggling, non-viable water and wastewater systems. These 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. We therefore find that it is in the public interest to allow CSWR to go forward with its requests for positive acquisition adjustments for these three systems.

...

We disagree 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, we find 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 Commission has previously decided the same issues in the other three of the five pending dockets. The Commission precedent is on point and there is no reason to deviate from it.

CONCLUSION

WHEREFORE, CSWR-Florida requests that the OPC's Motion be denied. As demonstrated above, and as previously held by the Commission in CSWR-Florida's other pending acquisition adjustment dockets, the Petition is not barred by administrative finality and does not seek retroactive application of the revised acquisition adjustments rule.

Respectfully submitted this 7th day of May, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail on this 7th day of May, 2026, to the following:

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