

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Petition for an acquisition adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.

DOCKET NO.: 20250047-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.

DOCKET NO.: 20250052-WS

FILED: April 17, 2025

**MOTION TO DISMISS WITH PREJUDICE OR ALTERNATIVE
MOTION FOR SUMMARY FINAL ORDER AND TO HOLD DOCKET
NO. 20250052-WS IN ABEYANCE.**

The Citizens of the State of Florida, by and through the Office of Public Counsel (“Citizens” or “OPC”), pursuant to Rule 28-106.204, Florida Administrative Code (“F.A.C.”) and Section 120.57(1)(h), Florida Statutes (“F.S.”), hereby file this Motion to Dismiss With Prejudice Or Alternative Motion for Summary Final Order And To Hold Docket No. 20250052-WS In Abeyance, on the grounds that the acquisition adjustment issues to be decided in Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS are barred under the doctrine of Administrative Finality.¹ Citizens has also filed a motion to hold Central States Water Resource’s (“CSWR”) request for rate increase in Docket No. 20250052-WS² in abeyance until Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS have been decided. In support of these motions, the Citizens state as follows:

¹ Due to the application of administrative finality, there are incurable errors in the petitions. Accordingly, OPC is not constrained by the 20-day requirement to file a motion to dismiss within Rule 28-106.204(2) F.A.C.

² Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company.

FACTS

CSWR, a regulated water utility, on March 6, 14, and 18, 2025, filed petitions requesting positive acquisition adjustments in Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS.

Despite prior Commission orders, CSWR has reasserted claims that were already adjudicated in 2022. The Commission previously denied CSWR's requests for acquisition adjustments for the same systems addressed in this motion. The denials were initially decided by unprotested PAA Order Nos. PSC-2022-0116-PAA-SU; PSC-2022-0115-PAA-WS; PSC-2022-0120-PAA-WU.³

Certificate No. 363-W subject of Docket No. 20250047-WS.

On May 5, 2021, CSWR filed an application for the transfer of Certificate No. 363-W in Docket No. 20210095-WU and requested a positive acquisition adjustment be included in the calculation of CSWR-Sunshine's rate base.⁴ On March 1, 2022, CSWR, Staff, and OPC addressed the Commission at an agenda conference about the acquisition in Docket No. 20210095-WU.⁵ The Commission, after hearing from the parties, voted to decide the issue of establishing rate base at that time and to deny the acquisition adjustment.⁶

Pursuant to the vote by the Commission, Order PSC-2022-0120-PAA-WU was issued on March 18, 2022. That PAA order provided all parties notice that the decision to deny the acquisition adjustment would become final and effective upon issuance of a Consummating Order unless protested.⁷ On April 11, 2022, the Commission, without protest by any of the parties, issued Consummating Order PSC-2022-0136-CO-WU making Order PSC-2022-0120-PAA-WU effective and final.

Certificate No. 249-S subject of Docket No. 20250038-WS.

On August 9, 2021, CSWR filed an application for the transfer of Certificate No. 249-S in Docket No. 20210133-SU and requested a positive acquisition adjustment be included in the calculation of CSWR-Sunshine's rate base.⁸ On March 1, 2022, CSWR, Staff, and OPC addressed

³ Each of these PAA Orders became final upon issuance of Consummating Orders PSC-2022-0137-CO-SU; PSC-2022-0133-CO-WS; PSC-2022-0136-WU.

⁴ Document No. 03907-2021 Docket No. 20210095-WU.

⁵ Document No. 01740-2022 Docket No. 20210095-WU. (Transcript).

⁶ Document No. 01528-2022 Docket No. 20210095-WU. (Vote Sheet).

⁷ Order No. PSC-2022-0120-PAA-WU pg. 11-12.

⁸ Document No. 08947-2021, Docket No. 20210133-SU.

the Commission at an agenda conference about the acquisition in Docket No. 20210133-SU.⁹ The Commission, after hearing from the parties, voted to decide the issue of establishing rate base at that time and to deny the acquisition adjustment.¹⁰

Pursuant to the vote by the Commission, Order PSC-2022-0116-PAA-SU was issued on March 17, 2022. That PAA Order provided all parties notice that the decision to deny the acquisition adjustment would become final and effective upon issuance of a Consummating Order unless protested.¹¹ On April 11, 2022, the Commission, after no protest by any of the parties, issued Consummating Order PSC-2022-0137-CO-SU making Order PSC-2022-0116-PAA-SU effective and final.

Certificate No. 517-W and 450-S subject of Docket No. 20250043-WS.

On May 3, 2021, CSWR filed an application for the transfer of Certificate No. 517-W and 450-S in Docket No. 20210093-WU and requested a positive acquisition adjustment be included in the calculation of CSWR-Sunshine's rate base.¹² On March 1, 2022, CSWR, Staff, and OPC addressed the Commission at an agenda conference about the acquisitions in Docket No. 20210093-WU.¹³ The Commission, after hearing from the parties, voted to decide the issue of establishing rate base at that time and to deny the acquisition adjustment.¹⁴

Pursuant to the vote by the Commission, Order PSC-2022-0115-PAA-WS was issued on March 15, 2022, that provided all parties notice that the decision to deny the acquisition adjustment would become final and effective upon issuance of a Consummating Order unless protested within the specified protest period.¹⁵ On April 08, 2022, the Commission, after no protest by any of the parties, issued Consummating Order PSC-2022-0133-CO-WS making Order PSC-2022-0115-PAA-SU effective and final.

⁹ Document No. 01741-2022, Docket No. 20210133-WU. (Transcript).

¹⁰ Document No. 01529-2022, Docket No. 20210133-SU. (Vote Sheet).

¹¹ Order No. PSC-2022-0116-PAA-SU pg. 11-13.

¹² Document No. 03856-2021, Docket No. 20210093-WU.

¹³ Document No. 01739-2022, Docket No. 20210093-WU. (Transcript).

¹⁴ Document No. 01527-2022, Docket No. 20210093-WU. (Vote Sheet.)

¹⁵ Order No. PSC-2022-0115-PAA-WU pg. 11-13.

ARGUMENT

The doctrine of administrative finality provides that there must be “a terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein.”¹⁶ There is a point in time in which orders must pass out of the Commission’s control, become final, and no longer subject to change or modification.¹⁷

The Commission, in 2022, denied CSWR’s request for acquisition adjustments in the acquired systems of Certificate Nos. 363-W, 249-S, 517-W, and 450-S. This denial came after the Commission listened to the parties at agenda, issued PAA Orders that were not protested, and were then finalized with Consummating Orders.¹⁸ The Consummating Orders, at their inception, were the terminal point in which the parties and the public relied on as the final and dispositive decision of all material issues of law and fact.¹⁹

OPC acknowledges there are exceptions to administrative finality that exist but are dependent upon significant changes in circumstances or a demonstrated public interest.²⁰ For instance, a legislative mandate that requires the retroactive application.²¹

The only change in circumstance from CSWR’s previous petitions is the modified Acquisition Adjustment Rule 25-30.0371 F.A.C. In Florida, administrative rules generally only have prospective applications.²² Similarly, federal courts also apply the principle of prospective application to new rules or modification of rules.²³ Neither the modified Acquisition Adjustment Rule, nor the statute, authorizes retroactive application.²⁴ Clearly a rule passed well after the acquisition and finalization of the orders approving them and establishing rate base cannot have

¹⁶ Reedy Creek Utils. Co. v. Fla. Pub. Serv. Com., 418 So. 2d 249 (Fla. 1982) (quoting Peoples Gas System v. Mason, 187 So.2d 335 (Fla. 1966)).

¹⁷ Id.

¹⁸ Consummating Orders PSC-2022-0137-CO-SU; PSC-2022-0133-CO-WS; PSC-2022-0136-WU.

¹⁹ Id.

²⁰ See, Fla. Power & Light Corp. v. Beard, 626 So. 2d 660 (Fla. 1993); Univ. Hosp., Ltd. v. Agency for Health Care Admin., 697 So. 2d 909, 912 (Fla. 1st DCA 1997).

²¹ Id.

²² Envtl. Tr. v. Dep’t of Env’tl. Prot., 714 So. 2d 493, 499 (Fla. Dist. Ct. App. 1998).

²³ See, Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988) (a federal rule or regulation is retroactive only if the enabling legislation contains a valid grant of authority specifically allowing the agency to apply the rule retroactively).

²⁴ See generally, Fla. Stats. 367.071(5), 367.081(2)(a), 367.121(1)(a), (b); 25-30.0371 F.A.C.

provided an incentive to make the acquisition. CSWR had the right in each contract to back out of the acquisition upon denial of the positive acquisition adjustments and did not invoke that right. Instead it closed on the transactions. Therefore, there are no significant changes in circumstances or demonstrated public interest that would compel overturning the Commission's previous decisions of CSWR's acquisition adjustments. Moreover, CSWR has not provided any facts or circumstances, almost three years after the initial decision, that the Commission did not already consider.

No exceptional circumstances exist to warrant disturbing the final decisions of the Commission as they pertain to the acquisition adjustments addressed above. The decisions were made following a full and fair process, and no legal grounds exist to reconsider the matter.

Thus, the Commission should grant OPC's Motion to Dismiss with prejudice based on application of the doctrine of administrative finality in Docket Nos. 20250047-WS, 20250038-WS, and 20250043-WS. OPC respectfully requests the Commission to vote on this motion prior to the date of CSWR's filing on May 23, 2025, for its requested Rate Increase Application in Docket No. 20250052-WS.

MOTION FOR SUMMARY FINAL ORDER

Pursuant to Section 120.57(1)(h) F.S., OPC moves in the alternative for Summary Final Order in Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS and asks the Commission to enter final judgment denying the acquisition adjustments. 120.57(1)(h) F.S., states in relevant part "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact. . . ." As stated above, the acquisition adjustment issues were all previously denied by this Commission under the PAA process, and to which Consummating Orders were issued and at their inception administrative finality attached. The only change in circumstance since the prior decisions is the modification of the Acquisition Adjustment Rule, which does not apply retroactively or create the impossibility of a *post hoc* incentive. Thus, due to the application of the doctrine of administrative finality and no change in material facts applicable to the acquisition adjustments, Citizens aver that the standard in 120.57(1)(h) F.S. has been met and that they are entitled as a matter of law to the entry of a final order denying the acquisition adjustments.

OPC respectfully requests the Commission to vote on OPC's Motion for Summary Final Order prior to the date of CSWR's filing on May 23, 2025, for its requested Rate Increase Application in Docket No. 20250052-WS.

MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Pursuant to Rule 28-106.211, F.A.C., Citizens hereby requests an order holding CSWR's rate request in Docket No. 20250052-WS in abeyance pending disposition of CSWR's acquisition adjustment requests in Docket Nos. 20250038-WS, 20250043-WS, and 20250047-WS. OPC is requesting the Commission to hold CSWR's Application for a rate increase, Docket No. 20250052-WS, in abeyance until the Commission has disposed of the untimely and impermissible efforts to resurrect the positive acquisition adjustments for the reasons discussed below.

On March 6, 14, and 18, 2025, CSWR filed petitions requesting positive acquisition adjustments. Shortly thereafter, on March 25, 2025, CSWR Florida requested approval of a test year letter for a rate increase in Docket No. 20250052-WS. OPC intervened in the acquisition adjustment dockets on April 2, 2025, and in CSWR's rate case docket on April 4, 2025. In the absence of an order on abeyance, the issue of acquisition adjustments would have to be litigated by OPC and CSWR in the rate case Docket No. 20250052-WS as well as the acquisition adjustment dockets. As these issues are inextricably unnecessary rate case expenses through the rate setting process in litigating these long-finalized issues in multiple dockets concurrently while being subject to multiple sets of Minimum Filing Requirements. The OPC would be forced to hedge and litigate in both venues without being able to segregate improperly incurred rate case expense.

Pursuant to Rule 28-106.211 F.A.C., "[t]he presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." OPC asserts that the purpose of this motion is not to cause improper delay, but to promote the just, speedy, and inexpensive determination of all aspects of each case. Holding the rate case in abeyance will reduce rate case expense and prevent unnecessary confusion when considering the impacts of the attempts to resurrect and revisit the long-finalized acquisition adjustment denial decisions into the rate case.

Therefore, OPC respectfully requests the Commission to place Docket No. 20250052-WS in abeyance until the conclusion of the acquisition adjustments.

CONCLUSION

OPC has contacted Counsel for CSWR, and the PSC for their positions regarding the Motion for Summary Final Order and Motion for Abeyance. CSWR objects to all motions, and the PSC has no position.

Wherefore, Citizens ask this Commission to grant this Motion to Dismiss with prejudice, or in the alternative, Motion for Summary Final Order and to hold CSWR's rate request in Docket No. 20250052-WS in abeyance until the conclusion of these dockets.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NOS. 20250038-WS, 20250043-WS,
20250047-WS, and 20250052-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 17th day of April, 2025, to the following:

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