

ORIGINAL



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

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RECORDS AND
REPORTING

January 8, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950387-SU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Post Hearing Statement of the Citizens of the State of Florida. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

- ACK _____
- AFA 2 _____
- APP _____
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DOCUMENT NUMBER - DATE
00338 JAN-8 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Increased) DOCKET NO. 950387-SU
Wastewater Rates by Florida)
Cities Water Company - North Ft.) FILED: January 8, 1999
Myers Division in Lee County.)
_____)

**POST HEARING STATEMENT OF THE
CITIZENS OF THE STATE OF FLORIDA**

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, hereby file their post hearing statement. Material added to the Citizens' prehearing statement is preceded with an asterisk (*).

BASIC POSITION:

OPC: The Citizens believe that the extent to which FCWC's wastewater treatment plant is used and useful should be determined by a comparison of load with capacity, where load and capacity are expressed in similar units. If a variant of peak capacity is to be utilized, then the same variant of peak load should be utilized; if a variant of average capacity is to be used then the same variant of average load should be utilized.

**ISSUES OF THE CASE AND
CITIZENS' POSITIONS THEREON:**

RATE BASE

ISSUE 1: Should the Commission ignore average daily flow in the peak month in determining used and useful plant to be included in rate base?

DOCUMENT NUMBER-DATE

00338 JAN-89

1518

FFSC-RECORDS/REPORTING

CITIZENS' POSITION:

QPC: No. The Commission should not ignore any legitimate aspect of plant capacity. However, where, as here, the utility's wastewater treatment plant is permitted in terms of average annual daily flow, it is appropriate to compute the used and useful percentage utilizing flows expressed in the same unites.

* FCWC has continuously urged that the commission matching of numerator and denominator "ignores" the obligation of the utility to handle the peak loads placed upon the plant. (Tr. 898)

As may be seen by the Citizens' position on this issue, the Citizens agree with FCWC that the peaks should not be ignored. In fact, Mr. Bidy testifies that the Commission's matching numerator and denominator does *not* ignore the peaks, and in fact, takes peaks into consideration. Even under cross examination by counsel for FCWC, Mr. Bidy testified:

Q. Mr. Bidy, in determining used and useful of a wastewater treatment plant in a Commission proceeding, should the average daily flow in the [maximum, max or peak]¹ month be ignored?

A. No, it should not be ignored. It is by virtue of

¹ The Citizens believe that the transcript contains a scrivener's error at this point. Mr. Gatlin's question was apparently designed to track this issue (issue #1)

the plant cost being multiplied by the used and useful percentage that's determined. It's the peak capacities of the plant and those facilities within the plant that handle peak flow such as the maximum month are included and, therefore, far from ignored, those dollars are in the cost of the plant and, therefore, in rate base.

(Tr. 1290)

The notion that the commission matching of numerator and denominator ignores the plants capacity to treat peaks is thoroughly rebutted by FCWC's own witness, Mr. Cummings, the gentleman who designed the plant expansion. (Tr. 933) It is undisputed that the permitted capacity of the waterway wastewater treatment plant is 1.25 MGD. Yet Mr. Cummings, discloses that this plant is capable of treating twice the permitted capacity. Mr. Cummings was asked by FCWC's counsel:

Q. What is the meaning of hydraulic flow rate in the determination of treatment capacity?

A. The treatment plant facilities, pipes, pumps, tanks must be able to pass a hydraulic flow rate without overflowing at any point or facility. The flow rate used in the design is not the annual average

flow of 1.25 mgd, but a daily peak flow rate that is twice the annual average rate. If the plant was designed for only the annual average flow rate, the plant would overflow during periods with the flow was above the average. (Tr. 946)

This is the kernel of what this case is about. Mr. Cummings designed a plant expansion which is permitted to treat 1.25 MGD annual average daily flow. The Commission computation of used and useful compares this capacity with a similar measure of average load, as well it should. FCWC claims that were the load to exceed the capacity recognized by the Commission, i.e., 1.25 MGD, that the plant would overflow. Indeed it would not because the testimony of Mr. Cummings shows that the plant permitted for 1.25 annual average daily flow will in fact accommodate a hydraulic load of twice that amount.

Recognizing FCWC's capacity to treat an average of 1.25 MGD is to recognize their capacity to treat peaks up to and including 2.5 MGD. That is why the Commission computation does not ignore the flows generated in the maximum month, or generated at any other time.

Two FCWC witnesses attempt to sway Commission attention from the substance of this issue to erroneous considerations of hydraulic loading versus biological

loading. (Acosta, Tr. 877; Cummings Tr. 939). But it is clear that even if biological loading were considered, the plants capacity to meet peaks is adequately reflected in the Commissions used and useful calculation. Mr. Cummings clearly testified that the plant design includes a peaking factor of 1.5 for carbonaceous load and 1.3 for nitrogenous load. (Tr. 939)

It is clear by the testimony of FCWC witnesses that the permitted plant capacity includes a "daily peak flow rate that is twice the annual average rate" which addresses the plant's capacity to meet hydraulic peaks and peak design loading which includes a peaking factor of 1.5 for carbonaceous load and 1.3 for nitrogenous load.

The use of Average Annual Daily Flow in the numerator of the used and useful calculation does not omit consideration of the plant's capacity to meet and treat peak flows. The plant is permitted in Average Annual Daily Flow, which includes a measure of the plant's capacity, to meet and treat peaks.

The Commission's use of Average Annual Daily Flow where the plant is permitted in Average Annual Daily Flow is dictated both by engineering considerations and by common sense.

ISSUE 2: Does a change in the wording of the DEP permit application so that the permit and application now indicate the time frame for design capacity, i.e. annual average daily flow, maximum monthly average daily flow or three month average daily flow correspond to a real change in operating capacity?

CITIZENS' POSITION:

OPC: No. A given wastewater treatment plant can be described and/or permitted utilizing several parameters; that is, with the actual capacity held constant, that capacity might be described in average terms, peak terms, or some variant of peak or average terms. The selection of one of these descriptors of capacity dictates that the same be used for comparison with the load in used and useful calculations.

ISSUE 3: Where the DEP permits the wastewater treatment plant based on annual average daily flows, what flows should be used in the numerator of the used and useful equation to calculate used and useful plant?

CITIZENS' POSITION:

OPC: Because the permitted capacity issued for FCWC's wastewater treatment plant (WWTP) is expressed in terms of annual average daily flows, the load presented to the WWTP must also be expressed in terms of annual average daily flows. Where the utility offers a statement of capacity which fails to include a time dimension, the customers should be given the benefit of the doubt: maximum, instantaneous capacity should be used in the denominator.

* The extensive arguments over this issue are not justified by its inherent simplicity. As Commission witness Crouch points out, "elementary, mathematical fact" dictates that equations "must always be dimensionally consistent." (Tr. 1143) As Mr. Crouch points out, "you cannot divide apples by oranges and get a valid result". (Tr. 1143)

The same principle is urged by Citizens' witness Dismukes. When asked by the Citizens counsel, she said:

Q. Why is it appropriate for the Commission to use the annual average daily flow in both the numerator and denominator of the Equation?

A. It is appropriate because the permit for that plant reflects that the plant was permitted in terms of annual average daily flows. In the most basic terms, used and useful is a comparison of the capacity of a plant to the load (or flows) it must treat. In order to reach a meaningful result, the capacity and the load must be expressed in the same units of measurement. In other words, the numerator and denominator of the used and useful calculation must both be expressed in the same units of measurement.

The question is not whether it is proper to express flow in annual average daily flow or monthly peak flows: the issue is which of these two measuring methodologies is correct where the plant capacity is clearly expressed in one or the other. It is clear that irrespective of which methodology is used, it should be used for both load (numerator)

and capacity (denominator). Thus, where the FDEP has permitted a wastewater treatment plant in terms of annual average daily flow, the load should be expressed the same. Expressing the load in terms of monthly peak flows, as argued by Florida Cities, where the same plant is rated in annual average daily flow will not only yield a meaningless result, but it will also overstate the used and useful percentage. Florida Cities would have the Commission compare "apples with oranges" as opposed to correctly comparing "apples to apples."

(Tr. 1031)

Mr. Biddy, testified on behalf of the Citizens. Mr. Biddy is a licensed professional engineer, who has designed "thousands of residential, commercial and industrial properties" including water and wastewater facility design, and environmental permitting. (Tr. 1279) Mr. Biddy was asked to directly address this issue by counsel for the Citizens, which he did:

Q. What are the appropriate numbers to be used for the numerator and denominator in calculating the used and useful percentage for a wastewater treatment plant?

A. It depends on what basis the wastewater treatment plant capacity is permitted by FDEP or designed by the engineers. If the plant capacity is permitted or designed on the basis of AADF, then the test year AADF should be used for the numerator. On the other hand, if the plant capacity is permitted on the basis of ADFMM, then the test year average daily flow of maximum month (ADFMM) should be used. Generally, the designed capacity is the same as the FDEP permitted capacity.

This method will insure that both numerator and denominator are arrived at from the same basis, i.e., apples to apples or oranges to oranges. To compute the used and useful percentage as FCWC suggests would be to mix comparisons of ADFMM to AADF and would yield a percentage with no meaning, as would comparing apples to oranges.

(Tr. 1282)

FCWCs' witness Acosta developed a novel theory to explain away the dimensional inconsistency which Messrs Bidy, Couch, and Ms. Dismukes identified. Mr. Acosta noted that since both ADFMM and AADF were expressed in

MGD, that dimensional consistency was achieved. (Tr. 910) On cross examination, however, Mr. Acosta, aside from a vague reference to a text, was unable to say how including references to MGD in the numerator and denominator eliminated the comparison of average units in the numerator with other than average units in the denominator. (Tr. 912)

The mismatch or dimensional inconsistency survives Mr. Acosta's theory. Ms. Dismukes, upon questioning from her Counsel addressed the matter directly:

Q. (By Mr. McLean) Did you write down "ADFMM?"

A. Yes.

Q. And accept that that stands for average daily flow maximum month?

A. Yes.

Q. Draw a line under it and write down "AADF" which stands for average annual daily flow. Do you have that?

A. Yes.

Q. Is that -- does that appear to be a mismatch to you or not?

A. Yes, that's a mismatch.

Q. Is that the central mismatch which you object to in this case?

A. Yes.

Q. Write down in parenthesis behind each of those -- on the top write down "paren GPD close paren." Do you have that?

A. Yes.

Q. Same thing on the bottom?

A. Yes.

Q. Does that cure the mismatch?

A. No.

(Tr. 1052)

As may be seen, the matter is one of simple mathematics, not one of sophisticated Commission policy. One divides apples by apples, oranges by oranges; ADFMM by ADFMM and AADF by AADF.

NET OPERATING INCOME

ISSUE 4: What is the appropriate provision for rate case expense since the remand by the First District Court of Appeal?

CITIZENS' POSITION:

OPC: No position pending further development of the record.

ISSUE 5: What is the appropriate provision for appellate non-legal rate case expense?

CITIZENS' POSITION:

OPC: No position; however, the Citizens believe that the Commission should include adequate provision in its order to ensure that should there be any award of attorneys' fees by any appellate court, that FCWC does not recover rate case expense from the customers through rates for the same work done.

ISSUE 6: What is the appropriate revenue requirement?

CITIZENS' POSITION:

OPC: This is a fall-out number driven by Commission resolution of contested issues.

ISSUE 7: What are the appropriate wastewater rates for Florida Cities Water Company - North Fort Myers Wastewater Division?

CITIZENS' POSITION:

OPC: No position.

ISSUE 8: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

CITIZENS' POSITION:

OPC: No position.

STAFF: The appropriate amount by which rates should be reduced is subject to the resolution of other issues.

ISSUE 9: Should the utility be required to refund a portion of the revenues implemented pursuant to Order No. PSC-95-1360-FOF-SU, issued November 2, 1995?

CITIZENS' POSITION:

OPC: This is a fall-out number driven by Commission resolution of contested issues.

Respectfully Submitted,

Jack Shreve, Public Counsel

Harold McLean
Associate Public Counsel

Office of Public Counsel
111 W. Madison St.
Tallahassee, FL
32399
Room 812

(850) 488-9330

**CERTIFICATE OF SERVICE
DOCKET NO. 950387-80**

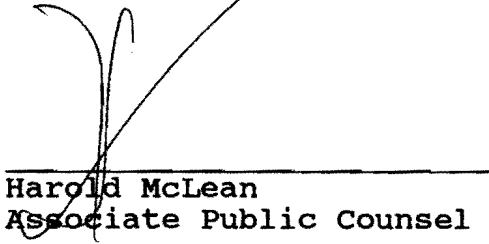
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or by *Hand-delivery to the following party representatives on this 8th day of January, 1999.

Kenneth Gatlin, Esquire
Ruden, McClosky, Smith, et al.
215 S. Monroe St.
Ste. 815
Tallahassee, FL 32301

Ralph R. Jaeger
Division of Legal Services
Fla. Public Service
Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Jerilyn Victor
1740 Dockway Dr.
N. Fort Myers, FL 33903

Cheryl Walla
1750 Dockway Dr.
N. Fort Myers, FL 33903



Harold McLean
Associate Public Counsel

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