



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED - FPSC
JUN 26 PM 1:39
COMMISSION CLERK

DATE: June 27, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (MOORE, JAEGER) DIVISION OF ECONOMIC REGULATION (WETHERINGTON, HEWITT) WILLIS

Handwritten signatures and initials: CTR, JAEGER, WETHERINGTON, HEWITT, WILLIS, and others.

RE: DOCKET NO. 000154-SU - PROPOSED RULE 25-30.432, F.A.C., WASTEWATER TREATMENT PLANT USED AND USEFUL CALCULATIONS.

AGENDA: 7/9/02 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\000154.RCM

CASE BACKGROUND

The Commission has a long-standing policy of determining the used and useful portion of a utility's wastewater treatment plant in part by applying a percentage derived from comparing the load or demand the customers place on the plant with the treatment capacity of the plant. Both demand and capacity are stated in terms of million gallons per day (mgd) over a certain time period-- annual average daily flow (AADF), average daily flow in the maximum month (MMADF), or three-month average daily flow (3MADF). To determine the capacity of the plant, the Commission has typically relied on the capacity stated on the utility's operating permit issued by the Florida Department of Environmental Protection (DEP).

In rate cases prior to 1996, the DEP permits ordinarily did not specify what time period had been used to measure the plant capacity, and the Commission typically used the average daily flow in the maximum or peak month to state the demand. In 1996, when

DOCUMENT NUMBER DATE

06570 JUN 26 02

FPSC-COMMISSION CLERK

the Commission observed that DEP had begun including the time period on permits, the Commission stated its policy to use the same time period to measure the demand or flow, thus matching the terms of the numerator and denominator of the used and useful equation. In Re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company, Order No. PSC-96-1133-FOF-SU, issued September 10, 1996, in Docket 950387-SU. The utility appealed the Commission's final order. The Florida First District Court of Appeal found the Commission's action to be a change in policy that was not supported by an adequate explanation or record evidence and reversed the final order. Florida Cities Water Co. v. State of Florida, Florida Public Service Comm'n, 705 So. 2d 620, 625-26 (Fla. 1st DCA 1998).

The court remanded the Commission's final order and directed it to give a reasonable explanation for the change in policy, supported by record evidence. The Commission held an evidentiary hearing and issued an order on April 8, 1999, explaining its policy and the evidence to support it. Order No. PSC-99-0691-FOF-SU, issued April 8, 1999 in Docket No. 950387-SU ("Final Order"). This order was also appealed by Florida Cities Water Company. On October 31, 2000, the court affirmed the Commission's order. Florida Cities Water Co. v. State of Florida, Florida Public Service Comm'n, 778 So. 2d 310 (Fla. 1st DCA 2000).

Staff drafted a rule to codify the policy and conducted rule development workshops on June 9, 1999, and May 9, 2000; however, further action on the rule was delayed pending resolution of the appeal. The rule recommended by Staff codifies the policy affirmed by the court.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose Rule 25-30.432, Florida Administrative Code, Wastewater Treatment Plant Used and Useful Calculations?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Rule 25-30.432 provides that the flow data used in the numerator of the calculation of the used and useful percentage of a wastewater treatment plant shall be the same period or basis (such as annual average daily flow, three-month average daily flow, or maximum month average daily flow) as the period or basis stated for the plant capacity on the most recent operating permit issued by DEP. The denominator of the calculation is the DEP permitted capacity. By matching the terms of the numerator and the denominator of the calculation, the Commission obtains a valid measurement upon which to base its determination of the percentage of the utility's plant that is used and useful in the public service.

In the Florida Cities Water Company rate case and the subsequent appeals, the utility argued that even though the permitted capacity of its plant was measured by the annual average daily flow (AADF), unless the average daily flow in the maximum month (MMADF) was used, the peak flows the plant is required to handle are not recognized for ratesetting purposes. Using the maximum month flow measurement when capacity is stated in annual average terms results in a higher used and useful amount. Based upon the evidence produced at the hearing on remand, the Commission found that using annual average daily flow in the numerator of the calculation does not ignore average daily flow in the peak month. Final Order p. 5-6, 11. An annual average amount logically includes the month with the peak flows (MMADF) as well as the 11 other months. The Commission also accepted the testimony of three witnesses that using MMADF to measure the load placed on the plant when the plant capacity is measured in AADF will overstate the used and useful percentage. Final Order pp. 9, 12. This results in requiring customers to pay higher rates which reflect a return on plant investment that is not used and useful in serving them. Final Order p. 12. Thus, where plant capacity is measured on an annual average basis, the percentage of the capacity that is being

DOCKET NO. 000154-SU
DATE: June 27, 2002

used must also be measured on an annual average basis. Final Order
p. 12.

The recommended rule recognizes that there are factors in addition to current customer demand or load that will be considered by the Commission to determine used and useful. The factors listed include an allowance for growth, infiltration and inflow, the extent to which the area served by the plant is built out, whether the permitted capacity differs from the design capacity, and whether there has been a decline in demand due to conservation measures or a reduction in the number of customers.

An allowance for growth is added to the flow measurement when growth is projected, and infiltration and inflow is subtracted when it is found to be excessive. E.g., In re: Application for rate increase in Martin County by Indiantown Company, Inc., Order No. PSC-00-2054-PAA-WS issued October 27, 2000, in Docket No. 990939-WS. The Commission has also considered whether a utility is built out; that is, where the size of a plant is prudent for the territory being served and no further population growth is expected, the wastewater treatment plant was found to be 100 percent used and useful even though the flow measurement showed excess capacity. E.g., In Re: Application for a Staff-Assisted Rate Case in Brevard County by Colony Park Utilities, Inc., Order No. PSC-96-1083-FOF-SU issued August 22, 1996, in Docket No. 951591-SU. In addition, the Commission has not reduced the level of used and useful plant from the level determined in an earlier proceeding when used and useful plant is less because of a decline in demand. E.g., In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc., Order No. PSC-96-1320-FOF-WS issued October 30, 1996, in Docket No. 950495-WS. The rule is worded so as to allow for other circumstances that may arise.

Rule 25-30.432 also provides for cases where the capacity of a plant is limited by an individual component. E.g., In re: Application for approval of staff-assisted rate case in Martin County by Laniger Enterprises, Order No. PSC-01-1574-PAA-WS issued July 30, 2001, in Docket No. 000584-WS. In such cases, the rule authorizes the Commission to calculate a used and useful percentage for each individual component of the treatment plant using the actual capacity of the component in the denominator.

The rule also addresses the circumstance where the capacity stated on the DEP permit is lower than the actual capacity of a utility's wastewater treatment plant. This has occurred when a utility's wastewater treatment plant capacity was greater than the amount needed and the utility requests a permit reduction. By lowering the permit capacity, the utility may reduce its staffing and plant operational costs. E.g., In re: application for staff-assisted rate case in Putnam County by Buffalo Bluff Utilities, Inc., Order No. PSC-002500-PAA-WS issued December 26, 2000, in Docket No. 000327-WS. The recommended rule provides that the Commission will consider any difference in design and permitted capacity in determining the used and useful amount.

The rule does not apply to reuse projects. Pursuant to section 367.0817(3), Florida Statutes, no used and useful analysis is applied to the prudently incurred costs of a reuse project. Southern States Utilities v. Florida Public Service Commission, 714 So. 2d 1046 (Fla. 1st DCA 1998). The rule also does not apply to investment for environmental compliance pursuant to section 367.081(2)(a)2.c., Florida Statutes. That section provides that the Commission shall approve rates for service that allow a utility to recover from customers the full amount of environmental compliance costs.

Chapter 120, Florida Statutes, the Administrative Procedure Act, provides that "[e]ach agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable." § 120.54(1)(a), Fla. Stat. (2000). Staff recommends that the Commission propose Rule 25-30.432 in order to codify its policy and comply with this statute. The rule implements section 367.081(2)(a), Florida Statutes, requiring the Commission to fix rates and to consider the cost of providing service including a fair return on the investment of the utility in property used and useful in the public service.

Statement of Estimated Regulatory Costs:

Adopting the recommended rule should not result in any significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties. Therefore, a statement of estimated regulatory costs was not prepared.

DOCKET NO. 000154-SU
DATE: June 27, 2002

ISSUE 2: If no request for hearing or comments are filed, should the proposed rule be filed for adoption with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes, the docket should be closed if no requests for hearing or comments are filed.

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the proposed rule may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments:

A - Recommended Rule 25-30.432

B - Memorandum Regarding Statement of Estimated Regulatory Costs

CTM/

1
2 25-30.432 Wastewater Treatment Plant Used and Useful
3 Calculations. The flow data to be used in the numerator of the
4 equation for calculating the used and useful percentage of a
5 wastewater treatment plant shall be the same period or basis (such
6 as annual average daily flow, three-month average daily flow,
7 maximum month average daily flow) as the period or basis stated for
8 the permitted capacity on the most recent operating permit issued
9 by the Florida Department of Environmental Protection (DEP). The
10 DEP permitted capacity shall be used in the denominator of the
11 equation. If there are differences between the capacities of the
12 individual components of the wastewater treatment plant, the
13 Commission may calculate a used and useful percentage for each
14 individual component of the treatment plant using the actual
15 capacity of the component in the denominator. In determining the
16 used and useful amount, the Commission will also consider other
17 factors such as the allowance for growth pursuant to section
18 367.081(2)(a)2., F.S., infiltration and inflow, the extent to which
19 the area served by the plant is built out, whether the permitted
20 capacity differs from the design capacity, and whether flows have
21 decreased due to conservation or a reduction in the number of
22 customers. This rule does not apply to reuse projects pursuant to
23
24
25

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

DOCKET NO. 000154-SU

DATE: June 27, 2002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

section 367.0817(3), F.S., or investment for environmental compliance pursuant to section 367.081(2)(a)2.c., F.S.

Specific Authority: 350.167(2), 367.121(1)(f), FS.

Law Implemented: 367.081(2), 367.0817(3), FS.

History: New

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

MEMORANDUM

October 22, 2001

TO: DIVISION OF APPEALS (MOORE)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT)

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR PROPOSED
RULE 25-30.432, F.A.C., FLOWS TO BE USED FOR WASTEWATER
TREATMENT PLANT USED AND USEFUL CALCULATIONS, DOCKET
NO. 00154-SU

M
CSH *CAL* *RT*
.TGS

Proposed Rule 25-30.432, F.A.C., Flows to Be Used for Wastewater Treatment Plant (WTP) Used and Useful Calculations, would set the basis for determining flows for wastewater treatment plant used and useful calculations. The appropriate flow data to be used in the numerator of the equation for calculating the used and useful percentage for a WTP are the same period or basis as that specified on the Department of Environmental Protection (DEP) permit used in the denominator, except in some exceptional cases.

When a wastewater utility files DEP Form 62-620.910(2), Application for a Domestic Wastewater Facility Permit, and Wastewater Permit Application Form 2A, the utility must specify the basis of Flow Design (Annual Average Daily Flow, Maximum Month Average Daily Flow, Three-Month Average Daily Flow, or Other). The rule would codify a mathematically logical process where the basis for flows used in the numerator of the used and useful formula matches the basis for flows, specified by the utility in the DEP permitting, in the denominator of the formula. The FPSC currently uses the DEP flow figure in calculating used and useful when a utility comes in for rate case, except in some exceptional cases.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, because there should be no significant additional costs from using a consistent number for flows in a formula and codifying a current practice, or negative impacts on utilities, small businesses, small cities, or small counties, a SERC will not be prepared for the proposed rule. Please keep my name on the CASR.

cc: Mary Andrews Bane
Hurd Reeves
Marshall Willis