

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



OFFICE OF THE GENERAL COUNSEL  
HAROLD A. MCLEAN  
GENERAL COUNSEL  
(850) 413-6199

Public Service Commission

July 22, 2002

Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

RE: Docket No. 000154-SU - Rule 25-30.432

Dear Mr. Webb:

Enclosed is an original copy of the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. No statement of estimated regulatory costs was prepared.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Christiana T. Moore  
Senior Attorney

ADM30432.CTM  
Enclosures

cc: Division of the Commission Clerk  
and Administrative Services

DOCUMENT NUMBER - DATE

07624 JUL 23 02

FPSC-COMMISSION CLERK

1        25-30.432 Wastewater Treatment Plant Used and Useful  
2 Calculations. The flow data to be used in the numerator of the  
3 equation for calculating the used and useful percentage of a  
4 wastewater treatment plant shall be the same period or basis  
5 (such as annual average daily flow, three-month average daily  
6 flow, maximum month average daily flow) as the period or basis  
7 stated for the permitted capacity on the most recent operating  
8 permit issued by the Florida Department of Environmental  
9 Protection (DEP). The DEP permitted capacity shall be used in  
10 the denominator of the equation. If there are differences  
11 between the capacities of the individual components of the  
12 wastewater treatment plant, the Commission may calculate a used  
13 and useful percentage for each individual component of the  
14 treatment plant using the actual capacity of the component in the  
15 denominator. In determining the used and useful amount, the  
16 Commission will also consider other factors such as the allowance  
17 for growth pursuant to section 367.081(2)(a)2., F.S.,  
18 infiltration and inflow, the extent to which the area served by  
19 the plant is built out, whether the permitted capacity differs  
20 from the design capacity, and whether flows have decreased due to  
21 conservation or a reduction in the number of customers. This  
22 rule does not apply to reuse projects pursuant to section  
23 367.0817(3), F.S., or investment for environmental compliance  
24 pursuant to 367.081(2)(a)2.c., F.S.  
25 Specific Authority: 350.127(2), 367.121(1)(f), FS.

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

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

2 | History: New \_\_\_\_\_.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000154-WU

RULE TITLE:

RULE NO.:

Wastewater Treatment Plant Used and 25-30.432

Useful Calculations

PURPOSE AND EFFECT: To codify Commission policy on calculating the used and useful amount of wastewater treatment plant.

SUMMARY: The rule provides that customer load will be measured in the same terms as the operating permit and provides examples of other factors that will be considered in calculating the used and useful percentage of wastewater treatment plant.

SPECIFIC AUTHORITY: 350.127(2), 367.121(1)(f), FS

LAW IMPLEMENTED: 367.081(2), 367.0817(3), FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

CHRISTIANA T. MOORE, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-30.432 Wastewater Treatment Plant Used and Useful Calculations. The flow data to be used in the numerator of the equation for calculating 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, maximum month average daily flow) as the period or basis stated for the permitted capacity on the most recent operating permit issued by the Florida Department of Environmental Protection (DEP). The DEP permitted capacity shall be used in the denominator of the equation. If there are differences between the capacities of the individual components of the wastewater treatment plant, the Commission may calculate a used and useful percentage for each individual component of the treatment plant using the actual capacity of the component in the denominator. In determining the used and useful amount, the Commission will also consider other factors such as the allowance for growth pursuant to section 367.081(2)(a)2., F.S., 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 flows have decreased due to conservation or a reduction in the number of customers. This rule does not apply to reuse projects pursuant to section 367.0817(3), F.S., or investment for environmental compliance pursuant to

367.081(2)(a)2.c., F.S.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mike Wetherington

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: July 9, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume  
26, Number 14, April 7, 2000

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

**STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE**

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 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. 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. The Florida First District Court of Appeal ultimately found the change in policy to be supported by evidence and an adequate explanation and affirmed the Commission final order. Order No. PSC-99-0691-FOF-SU, issued April 8, 1999 in Docket No. 950387-SU, affirmed, Florida Cities Water Co. v. State of Florida, Florida Public Service Comm'n, 778 So. 2d 310 (Fla. 1st DCA 2000).

The proposed 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. 1<sup>st</sup> 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, 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). The Commission proposes 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 ON FEDERAL STANDARDS**

There is no federal standard on the same subject.