

ORIGINAL

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

2002 DEC -6 AM 11:35
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
FILED

I do hereby certify:

/x/ (1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

/x/ (2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

/x/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

/ (a) Are filed not more than 90 days after the notice;
or

/ (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending;
or

/x/ (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

/ (d) Are filed more than 90 days after the notice, but

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC /
- OTH _____

DOCUMENT NUMBER-DATE

13448 DEC-98

FPSC-COMMISSION CLERK

not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

✓/ (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

✓/ (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

✓/ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

✓/ (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

✓/ (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

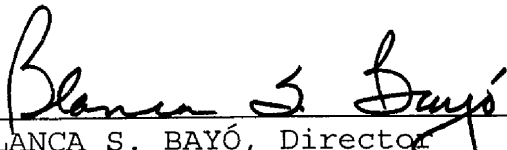
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-30.432

Under the provision of subparagraph 120.54(3)(e)6., F.S.,
the rules take effect 20 days from the date filed with the
Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

Number of Pages Certified

(S E A L)

CTM

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. In determining the used and
11 useful amount, the Commission will also consider other factors
12 such as the allowance for growth pursuant to section
13 367.081(2)(a)2., F.S., infiltration and inflow, the extent of
14 which the area served by the plant is built out, whether the
15 permitted capacity differs from the design capacity, whether
16 there are differences between the actual capacities of the
17 individual components of the wastewater treatment plant and the
18 permitted capacity of the plant, and whether flows have decreased
19 due to conservation or a reduction in the number of customers.
20 This rule does not apply to reuse projects pursuant to section
21 367.0817(3), F.S., or investment for environmental compliance
22 pursuant to 367.081(2)(a)2.c., F.S.

23 Specific Authority: 350.127(2), 367.121(1)(f), FS.

24 Law Implemented: 367.081(2), FS.

25 History: New 12/06/02.

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

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SUMMARY OF RULE

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.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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

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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, 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.