

State of Florida



# 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-**

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**DATE:** September 25, 2019  
**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk  
**FROM:** Samantha Cibula, Office of the General Counsel *SMC*  
**RE:** Docket No. 20000154-WU

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Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC  
2019 SEP 25 PM 2:00  
COMMISSION  
CLERK

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

October 16, 2002

Mr. John Rosner  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300

Re: Rule 25-30.432

Dear Mr. Rosner:

I had written to you on September 19, 2002, about possible changes to the above rule to respond to your objection. At that time, we decided to postpone adopting the rule in order to accommodate review by the committee, thereby tolling the period for filing it. I spoke to Jesslyn Krouskroup on October 14, 2002, to confirm this in your absence. I did not receive your response to the suggested rule change until Tuesday, October 15, 2002, as you can see from the attached copy, although it was dated September 24, 2002. The next scheduled agenda conference or public hearing at which the Commission can approve the change to the rule to remedy your objection is not until November 5, 2002. Therefore, the rule will not be filed within 90 days of the date of the original notice of rulemaking, but will be filed within the time authorized under the applicable exception.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore  
Associate General Counsel

JOHN M. MCKAY  
President



THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

THOMAS FEENEY  
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Representative Donna Clarke, Chair  
Senator Betty S. Holzendorf, Alternating Chair  
Senator Bill Posey  
Senator Ken Pruitt  
Representative Nancy Argenziano  
Representative Wilbert "Tee" Holloway

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

## Memorandum

**TO:** Christiana T. Moore  
**FROM:** John Rosner *JR*  
**DATE:** September 24, 2002  
**SUBJECT:** Public Service Commission Rule 25-30.432

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02 OCT 15 PM 2:08  
FLA PUBLIC SERVICE COM.  
OFFICE OF THE  
GENERAL COUNSEL

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Thank you for your letter dated September 19, 2002, and the attached rule amendment. I have carefully reviewed the document. In my judgment, the proposed language addresses the issue raised in my previous correspondence.

STATE OF FLORIDA

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Public Service Commission

September 19, 2002

Mr. John Rosner  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300

Re: Rule 25-30.432

Dear Mr. Rosner:

This letter is in response to your letter dated September 4, 2002, inquiring whether we intend to file the above rule as written. Commission staff is presently considering whether to recommend to the Commission that it modify the rule or withdraw it entirely. One option is to modify it as shown on the attached draft copy. If you agree that this version resolves your objection, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore  
Associate General Counsel

Enclosure

c: Marshall Willis

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, whether there are differences between  
21 the actual capacities of the individual components of the  
22 wastewater treatment plant and the permitted capacity of the  
23 plant, and whether flows have decreased due to conservation or a  
24 reduction in the number of customers. This rule does not apply  
25 to reuse projects pursuant to section 367.0817(3), F.S , or

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

1 investment for environmental compliance pursuant to section

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

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

4 Law Implemented: 367.081(2), FS.

5 History: New \_\_\_\_\_.

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

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## Public Service Commission

August 21, 2002

Mr. Matthew Sirmans  
Chief Attorney  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, FL 32399-1300

Re: Rule 25-30.432, Wastewater Treatment Plant Used and Useful Calculations

Dear Mr. Sirmans:

This letter is in response to your letter dated August 8, 2002, regarding the above rule. You have asked under what circumstances would the Commission calculate a used and useful percentage for each individual component of the treatment plant and whether there is a situation whereby the Commission would not use the actual capacity in the calculation. The particular language that you question is:

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.

You state in your letter that the language in the proposed rule appears to be contrary to the explanation found in the Statement of Facts and Circumstances Justifying the Rule, however, I believe that you may be comparing the wrong part of the explanation in the Statement to the above rule provision. The statement that "[t]he Commission will consider any difference in design and permitted capacity in determining the used and useful amount" is intended to address the rule provision listing the factors the Commission will consider which includes "whether the permitted capacity differs from the design capacity" among others. That is meant to address the situation where the DEP permitted capacity differs from the design capacity.

The rule provision quoted above, which is at issue here, is explained as follows in the Statement of Facts and Circumstances Justifying the Rule:

Mr. Matthew Sirmans  
August 21, 2002  
Page -2-

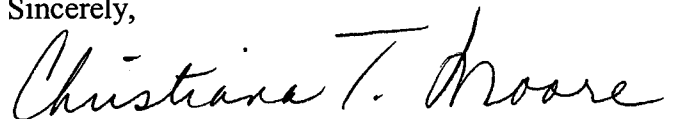
Rule 25-30.432 also provides for cases where the capacity of a plant is limited by an individual component. E.g., In re: Application for approval of staff-assisted rate case in Martin County by Laniger Enterprises, Order No. PSC-01-1574-PAA-WS issued July 30, 2001, in Docket No. 000584-WS. In such cases, 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 term "may" in this case means "is authorized to" and is meant only to provide information to those affected by the rule and other interested persons, and notify them that this is an action the Commission can take. Whether used and useful is calculated for each individual component will generally depend initially on whether, in a particular case, the capacity data is available by component. If the data is available, it still might not be practical to calculate used and useful for each individual component because, for instance, in the judgment of the Commissioners, the evidence in the particular case shows that calculating it one way or another makes no material difference in the used and useful amount and the customer rates. On the other hand, for example, in a given wastewater treatment system, the treatment plant may have a significantly greater capacity than the effluent disposal system, and the flows show that the effluent disposal system is 100 percent used and useful while the wastewater treatment plant—calculated separately—is only 50 percent used and useful. Although the entire system can only treat and dispose of the amount its smallest component can process, it would be unfair for customers to pay rates on an amount that was calculated as if the treatment plant is also 100 percent used and useful, unless, for instance, there is evidence that the utility could not have installed a smaller (and less costly) treatment plant.

In addition, it is the ratemaking statute—section 367.081(2)—rather than the rule that vests the discretion in the Commission to determine what portion of each utility's property is used and useful in the public service. Even though the Commission endeavors to codify its policies by rule, it still often must resort to case-by-case resolution to ensure fair and compensatory rates under section 367.081, Florida Statutes.

I hope this response satisfactorily addresses your concerns. Please do not hesitate to call me if you have questions.

Sincerely,



Christiana T. Moore  
Senior Attorney