

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-

DATE: August 16, 2007

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Gervasi, Jaeger) *PL/MS*
Division of Economic Regulation (Redemann, Rendell, Rieger) *CRBB*

RE: Docket No. 070183-WS – Proposed adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations. *198*

AGENDA: 08/28/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

SPECIAL INSTRUCTIONS: 90-day deadline; item cannot be deferred

FILE NAME AND LOCATION: S:\PSC\GCL\WP\070183.RCM.DOC

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Case Background

By Order No. PSC-07-0469-NOR-WS, issued May 31, 2007, in this docket, the Commission issued notice of its intent to adopt new Rule 25-30.4325, Florida Administrative Code (F.A.C.), relating to water treatment plant used-and-useful calculations. The Notice of Rulemaking appeared in the June 8, 2007 edition of the Florida Administrative Weekly, and advised that if timely requested, a hearing would be held at a time and place to be announced in a future notice.

On June 29, 2007, the Office of Public Counsel (OPC), timely filed a request for a formal evidentiary hearing on the proposed adoption of the rule on behalf of the Citizens of the State of Florida (Citizens), pursuant to subsection 120.54(3)(c)2., Florida Statutes (F.S.). That subsection provides that

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[r]ulemaking proceedings shall be governed solely by the provisions of [s. 120.54] unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. . . . Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

Pursuant to Uniform Rule of Procedure 28-103.005(2), F.A.C., "[t]he agency shall determine the merits of the request and grant or deny it." Rule 28-103.005(3), F.A.C., further provides that "[i]f the agency grants the request, the rulemaking proceeding shall be suspended until the evidentiary proceeding has been concluded. The agency shall not file the proposed rule for adoption until the request has been denied, or until the issues raised in the request have been resolved by the agency." As required by Rule 28-103.005(4), F.A.C., a Notice of Hearing on OPC's request will appear in the August 17, 2007 edition of the Florida Administrative Weekly, advising that a request for evidentiary proceeding has been submitted and that if the Commission grants this request, the rulemaking proceeding will be suspended until the evidentiary proceeding has been concluded.

This recommendation addresses OPC's request for a formal evidentiary hearing. The Commission has jurisdiction pursuant to section 120.54, F.S.

Discussion of Issues

Issue 1: Should the Office of Public Counsel's request for a formal evidentiary hearing be granted?

Recommendation: Yes, the Office of Public Counsel's request should be granted. Accordingly, the rulemaking proceeding should be suspended pending the completion of a formal evidentiary hearing on the matter and resumed upon the conclusion of the formal evidentiary proceeding, pursuant to subsection 120.54(3)(c)2., Florida Statutes.

Staff Analysis: Because proposed Rule 25-30.4325, F.A.C., will establish uniform standards for the calculation of the used-and-useful percentages for water treatment and storage facilities for all Commission-regulated water companies, OPC asserts that the substantial interests of all customers of privately owned water companies regulated by the Commission will be affected by it. These standards will determine what portions of the companies' water treatment and storage plant-in-service will be included in rate base. Setting these standards will have a material effect on determining the revenue requirements and resulting rates and charges to be imposed upon ratepayers in future water rate case proceedings.

OPC contends that many of the provisions of proposed Rule 25-30.4325, F.A.C., do not properly establish or properly apportion the costs of providing water service between current and future customers. OPC asserts that conducting a public hearing on the proposed rule under the provisions of section 120.54(3), F.S., will not adequately protect the Citizens' substantial interests because establishing proper standards for the calculation of the used-and-useful percentages of water treatment, storage and high service pumping plant-in-service involves complex engineering issues. The substantial interests of the Citizens require that these complex issues be presented and resolved in a formal evidentiary hearing under sections 120.569 and 120.57(1), F.S., where the experts for the utilities and the customers can present their sworn testimony subject to cross-examination and file post-hearing briefs. Therefore, OPC requests that the Commission suspend the rulemaking proceeding in order to conduct a formal evidentiary hearing on the proposed rule, and resume the rulemaking proceeding after the conclusion of the formal evidentiary hearing and issue its notice of intent to adopt a rule consistent with its findings in the formal evidentiary hearing.

Staff agrees that the resolution of the uniform standards established by the proposed rule for the calculation of used-and-useful percentages will have a material effect on determining the revenue requirements and resulting rates and charges to be imposed upon ratepayers in future water rate case proceedings. Therefore, the Citizens' substantial interests will be affected by the proposed rule. Moreover, OPC has demonstrated that the rulemaking proceedings do not provide an adequate opportunity to protect the Citizens' substantial interests. Establishing the proper standards for the calculation of the used-and-useful percentages of water treatment, storage and high service pumping plant-in-service indeed involves complex engineering issues.¹ Historically,

¹ The purpose of used-and-useful calculations is to ensure that current customers only pay for utility plant that is needed to provide reliable service, including the statutory growth allowance, while taking into account the efficiencies of building a plant properly sized to serve future total expected customer load. As a general rule, it is more cost effective to build one plant which can meet all customer demand as it comes online, than to build a small

substantial amounts of staff, utility, consultant, and ratepayer advocate time have been spent litigating the correct used-and-useful percentages in water rate cases that have come before the Commission.² Therefore, staff recommends that OPC's Petition for Hearing should be granted. Accordingly, the rulemaking proceeding should be suspended pending the completion of a formal evidentiary hearing on the matter and resumed upon the conclusion of the formal evidentiary proceeding, pursuant to subsection 120.54(3)(c)2., F.S.

plant at first and keep expanding it as customer demand increases. However, where growth will occur over an extended period of time, it is unfair to require the first customers to pay all the costs of a plant with excess current capacity which is of no use to these first customers. Used-and-useful calculations are an attempt to balance these two competing interests.

² The used-and-useful percentage for water plants is generally calculated by adding the customer demand, required fire flow, and statutory growth allowance together. Excessive unaccounted-for water is then subtracted, and this numerator is then divided by total plant capacity. The result is the used-and-useful percentage for the plant being analyzed. Typically, this used-and-useful percentage is then applied to the utility's investment in the plant and depreciation to determine how much investment should be recovered in current rates.

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Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open pending the completion of a formal evidentiary proceeding and subsequent completion of the rulemaking proceeding. (Gervasi)

Staff Analysis: This docket should remain open pending the completion of a formal evidentiary proceeding and subsequent completion of the rulemaking proceeding.