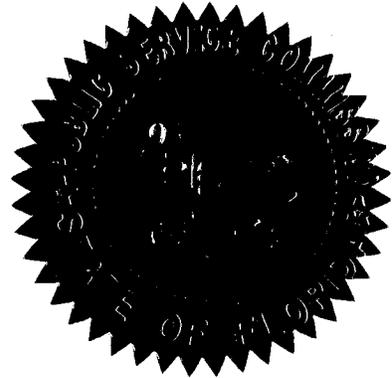


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070183-WS

In the Matter of:

PROPOSED ADOPTION OF RULE 25-30.4325,
F.A.C., WATER TREATMENT PLANT USED
AND USEFUL CALCULATIONS.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. MCMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 22, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 STEPHEN C. REILLY, ESQUIRE, Office of Public Counsel,
3 representing the citizens of the State of Florida.

4 MARTIN S. FRIEDMAN, ESQUIRE, representing Utilities
5 Inc. of Florida.

6 KENNETH HOFFMAN, ESQUIRE, representing Aqua Utilities
7 Florida.

8 MICHAEL COOKE, GENERAL COUNSEL, and SAMANTHA CIBULA,
9 ESQUIRE, representing the Florida Public Service Commission
10 Staff.

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P R O C E E D I N G S

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CHAIRMAN EDGAR: And we will now move to Item 3.

MS. CIBULA: Samantha Cibula of the Commission's legal staff.

Commissioners, Item Number 3 is staff's recommendation to propose the adoption of Rule 25-30.4325 as set forth in Attachment A. Staff is prepared to address any questions the Commission may have at this time.

CHAIRMAN EDGAR: Thank you. And we'll give folks a moment to get settled. As Ms. Cibula has described, Item 3 before us is a proposed adoption of a rule.

Mr. Reilly, would you like to share some comments with us?

MR. REILLY: Yes. Steve Reilly with the Office of Public Counsel.

As the Commissioners know, this is an item that's been workshopped and discussed since the summer of 2006. The -- principally Utilities, Inc. and Aqua have representation and engineers that have been involved in the docket, and the Office of Public Counsel on behalf of the ratepayers and staff, those are the four principal players.

What you have before you, I guess, is staff's best fix on what they think should be done as a result of all the comments and suggestions. I would say that it's a pretty complicated rule with a lot of nuances and a lot of

1 complexities to it. The positions are very strongly held by
2 the utilities and the customers and they're very different from
3 each other, and without a question this matter will be
4 protested by either side.

5 So I would suggest to the Commission, and I think
6 both the utilities agree with me, that this is a matter that,
7 that really the Commission perhaps should not weigh in on on
8 the merits today in an agenda conference, understanding that
9 it's going to be protested. And that to basically vote out
10 today the staff recommendation as just being a straw to put out
11 there to allow all the people to critique and make their
12 changes and really allow the five Commissioners to make their
13 collective judgment after the benefit of all the detailed
14 testimony, after the benefit of the briefing, and that would
15 allow -- you know, to proceed in that way. So that's basically
16 what I would suggest, and I think the utilities would, would
17 agree that it's a matter that we should just vote out staff at
18 this point, understanding it's going to be protested. And then
19 we'll look at it in a very detailed way and hopefully come up
20 with a policy that will fairly balance the cost of providing
21 service to current customers versus future customers, which
22 this ultimately really gets down to. Thank you.

23 CHAIRMAN EDGAR: Thank you, Mr. Reilly.

24 And as you've noted, we are in the process. And the
25 rule adoption process is often a lengthy one, and procedurally

1 we are somewhere in the middle of that process.

2 Mr. Friedman, did you have some comments for us?

3 MR. FRIEDMAN: Yes. Thank you. It's Martin Friedman
4 with the Law Firm of Rose, Sundstrom & Bentley, and we
5 represent Utilities, Inc. and its subsidiaries in Florida.

6 And this has gone through a long process, input not
7 only from the parties that Mr. Reilly mentioned but also from
8 the government agencies have had input into this, and their
9 input has been incorporated in the final draft that has come
10 out, and we think the final draft is a good draft. We don't
11 have any -- if we had to live with the existing draft, we could
12 do so. So when Mr. Reilly said that somebody was going to
13 protest this rule, it would not be us in the form that it's in
14 today. Thank you.

15 CHAIRMAN EDGAR: Thank you.

16 Mr. Hoffman.

17 MR. HOFFMAN: Thank you, Madam Chairman. My name is
18 Ken Hoffman. I'm here this morning on behalf of Aqua Utilities
19 Florida.

20 I think I would join in the comments of Mr. Friedman.
21 Mr. Reilly did contact me to let me know that it was the Office
22 of Public Counsel's intention to protest and ask for a hearing
23 on this rule, which is their prerogative. And based on that,
24 we did not bring Mr. Guastella in to address the merits and
25 have that debate today. So we concur with his approach because

1 that's his right to ask for that, so that's where we're at.

2 CHAIRMAN EDGAR: Thank you, Mr. Hoffman.

3 Commissioners, any questions for our staff or for the
4 other interested parties here before us today either about the
5 process or about the rule language that has been proposed
6 before us?

7 Commissioner Carter.

8 COMMISSIONER CARTER: Just a comment, Madam Chairman.
9 I think Mr. Reilly kind of makes sense in that we really want
10 to move forward with the rule and this puts us in a posture to
11 move forward and let, let -- have the protest or whatever the
12 case may be, but at least we have a specimen sample here that
13 people are working from so that we've got a working document
14 that everyone knows what they're dealing with. And I just
15 think that because of the, the fact that we need to have this
16 rule in place as soon as possible, this puts us in a posture
17 where we can move beyond the esoteric aspects of it and move
18 toward coming up with a rule.

19 CHAIRMAN EDGAR: Thank you.

20 Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: Thank you, Madam Chair.

22 Just for clarification, first of all, I understand
23 the need for standardization for used and useful calculations
24 as I think it will simplify things, but I'm afraid that one
25 shoe does not fit all. And if we were to move on this today

1 and then we have further discussion later on, we can then --
2 we're not actually promulgating the rule today, are we?

3 CHAIRMAN EDGAR: No. My, and I will ask our attorney
4 to speak to that, but my understanding is we are, we would be
5 proposing this language. And then if there is -- if there were
6 not to be a request for a hearing, then after a certain number
7 of days it would go into effect or move on to the next step in
8 the process. However, if there is a request for a hearing, as
9 Mr. Reilly has expressed that he will take advantage of that
10 option, it will at some point then come back before us.

11 But, Ms. Cibula --

12 MS. CIBULA: That's correct.

13 CHAIRMAN EDGAR: -- if you can expand upon my brief
14 description.

15 MS. CIBULA: That's correct.

16 COMMISSIONER ARGENZIANO: Madam Chair.

17 CHAIRMAN EDGAR: Commissioner.

18 COMMISSIONER ARGENZIANO: I know we have many water
19 cases coming before us, so I'm not sure of the benefits of
20 doing that now and maybe you can help clarify. Commissioner
21 Carter is stating that it may be good to get this thing going
22 now and have some discussion on it later. Or would it be
23 advisable to wait on the rule, and, and forgive me, I haven't
24 been part of this discussion before, and go through some of the
25 water cases that we have?

1 CHAIRMAN EDGAR: Ms. Cibula, can you speak to the
2 Commissioner's question?

3 MS. CIBULA: I guess it would come down to when a
4 hearing would be scheduled on the Commission calendar. We
5 could simultaneously go through both the hearing process with,
6 I guess, some of the water cases that are pending now and the
7 rulemaking, but I think it's really going to come down to when
8 the hearing in this is going to be scheduled.

9 CHAIRMAN EDGAR: Mr. Cooke.

10 MR. COOKE: Just to expand on that, I also believe
11 that, and staff can speak to this more clearly than I can, but
12 I think that the proposed rule tends to incorporate concepts
13 that have been used previously in prior water cases. So I
14 think staff is pretty comfortable with the proposed rule, but
15 the Office of Public Counsel still has some concerns about it.
16 This has been going on for a long time. We can't have a
17 hearing unless we do a proposed rule, and a hearing seems to be
18 like an appropriate next step. So that's, I think, why
19 everyone is comfortable with taking this step.

20 CHAIRMAN EDGAR: Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: Thank you.

22 And would the Office of Public Counsel be able to
23 handle a hearing and the other water cases at the same time?

24 MR. REILLY: Yes, Commissioner. Let me address
25 several things.

1 Number one, do not fear that your voting this out
2 today will cause this to become the rule. We promise you that
3 we will be protesting this proposed rule. That's number one.

4 Number two, I do -- our office shares your feeling
5 about timing. We have a very large Aqua case that's coming
6 down the road. It affects 80 systems all over the State of
7 Florida. I think it's the feeling of staff, probably the
8 utility, as well as the Office of Public Counsel that, that
9 the, all of the energy and effort that's devoted to determining
10 a proper policy for used and useful on water should apply to
11 that case.

12 In the next few weeks there's going to be a lot of
13 things that will, will fall out. There are a number of
14 Utilities, Inc. cases that are in the process of being settled.
15 The 253 case is being talked about today. There is a
16 possibility that that one could be possibly resolved.

17 After the dust settles on all this activity, I think
18 it's the intention of Public Counsel and staff to really look
19 at our calendar and see how we can figure out how to proceed in
20 the most administratively efficient way that would somehow
21 allow the parties to, you know, put, put their experts and so
22 forth and fight at one time the issue of used and useful, and
23 then have the result of that rule apply to the 80 systems in
24 the Aqua case. I mean, that just makes perfect sense and
25 that's what we're trying to do.

1 Likewise, I don't think that customers of Aqua should
2 be paying a lot of rate case expense fighting out 80 systems of
3 water, you know, used and useful, if this can be handled on
4 this side docket. So, I mean, there's going to be some
5 benefits to the ratepayers to do it in that way, and just
6 really for staff and, frankly, for all concerned. And that's
7 kind of where we're headed with this.

8 CHAIRMAN EDGAR: Commissioner McMurrrian.

9 COMMISSIONER McMURRIAN: Thank you. I guess this is
10 for legal. We do have a precedent for considering a proposed
11 rule like this as a strawman and not actually voting it out as
12 proposed in the recommendation; right?

13 MS. CIBULA: In a prior case you have done that.

14 COMMISSIONER McMURRIAN: In fact, not too long ago, I
15 don't, I don't think. So, so there's nothing that prevents us
16 from doing what OPC has suggested and just laying it out as a
17 strawman and not actually voting it out today.

18 MR. COOKE: Commissioners, the whole idea of
19 rulemaking is to develop a proposal and let appropriate
20 hearings and/or input come in so that you can improve on that
21 proposal. And it doesn't mean that you're necessarily wedded
22 to what the language of the proposed rule is.

23 COMMISSIONER McMURRIAN: And I --

24 CHAIRMAN EDGAR: I harken back to rule, rule hearings
25 on other rules months earlier. So we will all be gathered here

1 at some point in the not too distant future to go over the
2 language very closely as we work our way through the rule
3 adoption and proposal process.

4 Commissioners, any further comment?

5 Commissioner Carter.

6 COMMISSIONER CARTER: Madam Chairman. Thank you,
7 Madam Chairman.

8 Mr. Reilly and I talked at great length about a lot
9 of the concerns that we have with some of these water cases and
10 I think he's right, which is why I'm prepared to move on the,
11 this, staff's recommendation such that we can get to the next
12 level. And I think that the Office of Public Counsel as well
13 as the ratepayers will be better served if we can get beyond
14 the talking phase and put something in practice, so as we get
15 to this, instead of saying, well, relying on precedent this may
16 work or this may not work, but we actually have a hard and fast
17 rule in place now to kind of make things a little more
18 predictable. And so I think it makes sense to do that.

19 The other thing is that by getting to the hearing
20 status and the protesting of the rule, then Public Counsel can
21 bring its own draft proposal based upon what you put in here.
22 And I just think it allows us to move it further along in the
23 process.

24 CHAIRMAN EDGAR: Thank you. As always, once again we
25 are striving for clarity as we move through these issues.

1 Commissioners, any other questions? Is there a
2 motion?

3 COMMISSIONER CARTER: Move staff.

4 CHAIRMAN EDGAR: Is there a second?

5 COMMISSIONER McMURRIAN: I have a question.

6 CHAIRMAN EDGAR: Commissioner McMurrian for a
7 question.

8 COMMISSIONER McMURRIAN: I have a question. Are you
9 moving staff as proposed or --

10 COMMISSIONER CARTER: Proposed. Proposed. I'm
11 sorry. Thank you.

12 COMMISSIONER McMURRIAN: Okay. Okay.

13 COMMISSIONER CARTER: As proposed.

14 CHAIRMAN EDGAR: Okay. Commissioners, we have a
15 motion. Do we have a second?

16 COMMISSIONER ARGENZIANO: Second.

17 CHAIRMAN EDGAR: Thank you. Commissioner Argenziano
18 seconds the motion.

19 All in favor, say aye.

20 (Unanimous affirmative vote.)

21 Opposed? Show it adopted. Thank you.

22 (Agenda Item 3 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 24th day of May, 2007.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734