

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations. | DOCKET NO. 070183-WS  
| ORDER NO. PSC-08-0043-PHO-WS  
| ISSUED: January 22, 2008

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 7, 2008, in Tallahassee, Florida, before Chairman Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

STEPHEN C. REILLY, ESQUIRE, OFFICE OF PUBLIC COUNSEL, C/O THE FLORIDA LEGISLATURE, 111 WEST MADISON STREET, ROOM 812, TALLAHASSEE, FL 32399-1400  
On behalf of the Office of Public Counsel (OPC).

KENNETH A. HOFFMAN, ESQUIRE, AND MARSHA E. RULE, ESQUIRE, RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., P. O. BOX 551, TALLAHASSEE, FL 32302, AND KIMBERLY A. JOYCE, ESQUIRE, AQUA AMERICA, INC., 762 W. LANCASTER AVENUE, BRYN MAWR, PA 10910  
On behalf of Aqua Utilities Florida, Inc. (AUF).

MARTIN S. FRIEDMAN, ESQUIRE, ROSE, SUNDSTROM & BENTLEY, LLP, 2180 W. STATE ROAD 434, SUITE 2118, LONGWOOD, FL 32779  
On behalf Utilities, Inc. (UI).

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On behalf of the Florida Public Service Commission (Staff).

**PREHEARING ORDER**

I. CASE BACKGROUND

By Order No. PSC-07-0469-NOR-WS, issued May 31, 2007, in this docket, this Commission issued a notice of 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On June 29, 2007, the Office of Public Counsel (OPC) timely filed a Petition for Hearing on the proposed adoption of the rule pursuant to subsection 120.54(3)(c)2., Florida Statutes (F.S.). By Order No. PSC-07-0741-PCO-WS, issued September 17, 2007, this Commission granted OPC's Petition and suspended the rulemaking proceeding pending the completion of a formal evidentiary proceeding. The rulemaking proceeding will be resumed upon the conclusion of the formal evidentiary proceeding, pursuant to subsection 120.54(3)(c)2., F.S. Two utilities, Aqua Utilities Florida, Inc. (AUF) and Utilities, Inc. (UI), have intervened in this matter. The formal hearing has been scheduled for January 22-23, 2008.

## II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapter 120, F.S., and Chapters 25-6, 25-22, 25-30 and 28-106, F.A.C., as well as any other applicable provisions of law.

## IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 367.156, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material

that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issue Nos.</u>
<u>Direct</u>		
Andrew T. Woodcock, P.E., M.B.A.	OPC	All issues except Legal Issue A
John F. Guastella, P.E.	AUF	All issues except Legal Issue A
Frank Seidman, P.E.	UI	All issues except Legal Issue A
Van Hoofnagle, P.E.	Staff	All issues except Legal Issue A and Issues 16-20
Dwight T. Jenkins, Esq., P.G.	Staff	Issue 10
Richard P. Redemann, P.E.	Staff	All issues except Legal Issue A

<u>Rebuttal</u>	<u>Proffered By</u>	
Andrew T. Woodcock, P.E., M.B.A.	OPC	Issues 3-8, 10, 11, and 16-20

<u>Surrebuttal</u>	<u>Proffered By</u>	
John F. Guastella, P.E.	AUF	Issues 3 and 4

VII. BASIC POSITIONS

**OPC:** OPC believes its recommendations concerning proposed Rule 25-30.4325, F.A.C., will afford utilities the opportunity to recover their prudent costs of providing sufficient quantity and quality of water service to current customers, plus the statutorily provided growth allowance. Water service is a vital life sustaining commodity. The affordability of this vital service for current ratepayers is increasingly becoming a statewide concern. In order for the Commission to safeguard the affordability of this vital service, it is imperative that the application of the Commission's rule does not result in the demand-numerator of the used and useful fraction to be overstated, and the capacity-denominator of the used and useful fraction to be understated.

The Commission can safeguard the affordability of water service to current customers without doing any harm to utilities if there is a finding that plant is not

100% used and useful. The Commission's Rule 25-30.434 Application for Allowance for Funds Prudently Invested (AFPI) Charges, was created for the very purpose of helping ensure the financial health of utilities that prudently construct plant that is not 100% used and useful. The Commission's AFPI rule allows utilities to develop an AFPI charge which, once approved by the Commission, allows the utility to recover depreciation and other carrying costs associated with plant that was found to be non-used and useful in a utility's rate case. The use of AFPI allows the Commission and utilities to match future growth and costs associated with that growth (i.e. building a larger plant) with the future customers that will receive the benefit of that larger plant.

**AUF:** AUF supports proposed Rule 25-30.4325 as a whole. The proposed rule, in its entirety, represents the culmination of the efforts of the Commission Staff and interested parties to develop a fair and workable rule which permits utilities the opportunity to recover their prudent, used and useful investment in water treatment plants. Indeed, the Commission Staff has done an exemplary job of coordinating and considering, through workshops and written comments, the input and positions of Commission regulated utilities, the Office of Public Counsel ("OPC"), the Department of Environmental Protection, the Water Management Districts and the Florida Rural Water Association. Generally speaking, the proposed rule as a whole would codify, in large part, prior Commission decisions and would help reduce continued litigation over used and useful issues, the cost of which are ultimately borne by the utility's customers.

This proceeding arises from a Petition filed by the OPC challenging the proposed rule in its entirety. As the Petitioner, OPC bears the burden of proof and the burden of demonstrating that the alternative proposals it has presented should be adopted by the Commission instead of the specific provisions in the proposed rule. In light of OPC's attack on the proposed rule, AUF has offered its own alternative proposals with respect to a few specific provisions in the proposed rule. As the proponent of such changes, AUF similarly bears the burden of proof with respect to its alternative proposals.

Given that OPC has placed the entire proposed rule at issue, AUF proposes that in its final consideration of the proposed rule that the Commission amend the proposed rule as follows:

1. Proposed Rule 25-30.4325(1)(a) -- High service pumps should be separated from storage facilities for purposes of identifying their cost and percentage used and useful. The calculation of used and useful for high service pumps should not be limited to a formula reflecting the ratio of demand to capacity.
2. Proposed Rule 25-30.4325(1)(c) and (d) -- In defining peak demand and accounting for fire flow, the definitions should be expanded to allow recovery of

“an appropriate fire flow” to ensure that utilities recover the cost of fire flow requirements for multiple hydrants throughout an entire service area. This amendment would permit utilities to recover the cost of facilities necessary to meet fire flow requirements over the entire system and as necessary to combat multiple or coincidental fires, or buildings requiring higher flows than may be identified by local fire departments or districts.

3. Proposed Rule 25-30.4325(1)(c), (d) and (7) -- Peak demands should not be reduced by excessive unaccounted for water. The cost of treatment facilities does not diminish if a system's lost and unaccounted for water becomes excessive over time. Adjustments for unaccounted for water should be limited to operating expenses. With respect to plant, the more appropriate response is to conduct a cost-benefit analysis to determine if the cause(s) of the excessive unaccounted for water should be repaired.

4. Proposed Rule 25-30.4325(7)(a) and (b) -- Peak demands, either maximum day or peak hour, should not be limited to a rate setting test year. Water systems are not designed for a rate setting test year but, instead, for the maximum demand whenever it might occur.

5. Proposed Rule 25-30.4325(7)(a) and (b) -- If there is an unusual occurrence on the single maximum day or peak hour in determining peak demand, the rule should be amended to provide for the use of the next highest maximum day so long as there is not an unusual occurrence on that day, rather than the use of the average of the five highest days within a thirty day period.

With respect to high service pumping, there should not be a separate rule provision providing for a used and useful calculation for high service pumping. In most cases, there is no need to perform a separate used and useful calculation for high service pumping. In such instances where a separate used and useful calculation for high service pumps may be appropriate, such factors as the configuration of the piping and the specific operation of the high service pumps must be taken into account, thereby making it impractical and inappropriate to develop a formulaic rule for used and useful for high service pumps.

**UI:** Utilities, Inc. supports the rule as proposed in Order PSC-07-0469-NOR-WS. The Commission should not make any piecemeal changes to the Proposed Rule. If the rule must be revised, Utilities, Inc. supports adopting the changes set forth in Exhibit FS-5 to Frank Seidman's testimony in their entirety.

**STAFF:** Staff's basic position is that proposed Rule 25-30.4325 should be adopted. However, in the spirit of compromise, staff is willing to agree to certain modifications to the proposed rule, as set forth in staff's positions on the issues. Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing

for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## VIII. ISSUES AND POSITIONS

### LEGAL ISSUE

**ISSUE A:** Which party bears the burden of proof to demonstrate that specific provisions of proposed Rule 25-30.4325 should not be adopted?

### POSITIONS

**OPC:** Each party who offers alternative language to the Commission's rule as initially proposed has the burden of going forward with evidence to support the party's alternative language. To the extent the Commission determines that the party offering the alternative language has established a valid basis for supporting the alternative language, the other parties that support the initial language or other alternative language will then have the burden of going forward with evidence to support their positions. Ultimately, the Commission should adopt rule language which is supported by a preponderance of the evidence, which on the whole, is the stronger evidence, however slight the edge may be.

**AUF:** As a Petitioner in this proceeding, the Office of Public Counsel bears the burden of proof in its comprehensive attack on the Staff's proposed rule. To the extent the other parties challenge various provisions of the Staff's proposed rule, those parties similarly bear the burden of proof with respect to individual challenged provisions.

**UI:** As the petitioner, the Office of Public Counsel bears the burden of proof to demonstrate that proposed Rule 25-30.4325 should not be adopted. If an intervenor or staff takes a position that any portion of the proposed rule should not be adopted, that party or staff has the burden of proof to demonstrate why that portion of the proposed Rule should not be adopted.

**STAFF:** As the petitioner, the Office of Public Counsel bears the burden of proof to demonstrate that proposed Rule 25-30.4325 should not be adopted. If an intervenor or staff takes a position that any portion of the proposed rule should not be adopted, that party or staff has the burden of proof to demonstrate why that portion of the proposed rule should not be adopted.

**TECHNICAL ISSUES**

**ISSUE 1:**                   **PROPOSED STIPULATION** – See Section X., Proposed Stipulations

**ISSUE 2:**                   Should the definition of storage facilities as proposed in Rule 25-30.4325(1)(b) be adopted?

**POSITIONS**

**OPC:**                       No. Subsection (1) (b) should be amended to read:  
Storage facilities include ground or elevated storage tanks. (Woodcock)

**AUF:**                       No. High service pumps should be separated from storage facilities for purposes of identifying their cost and percentage used and useful. The calculation of used and useful for high service pumps should not be limited to a formula reflecting the ratio of demand to capacity. (Guastella)

**UI:**                           Yes. (Seidman)

**STAFF:**                   Yes, the definition of storage facilities as proposed in Rule 25-30.4325(1)(b) should be adopted. (Redemann)

**ISSUE 3:**                   Should the definition of peak demand as proposed in Rule 25-30.4325(1)(c) be adopted?

**POSITIONS**

**OPC:**                       No. Subsection (1) (c) should be amended to read:  
Peak demand for a water treatment system includes:  
1. For utilities without storage, the greater of:  
(i) the utility’s maximum hour demand, excluding excessive unaccounted for water, plus a growth allowance based on the requirements in Rule 25-30.431, F.A.C., or  
  
(ii) the utility’s maximum day demand, excluding excessive unaccounted for water plus a growth allowance based on the requirements in Rule 25-30.431, F.A.C., and where provided, a minimum of either the fire flow required by local government authority or 2 hours at 500 gpm.  
  
2. For utilities with storage, the utility’s maximum day demand, excluding excessive unaccounted for water plus a growth allowance based on the requirements in Rule 25-30.431, F.A.C., and where provided, a minimum of either the fire flow required by local governmental authority or 2 hours

at 500 gpm. This fire flow volume (rate x duration) shall be included in the peak demand for water treatment systems with storage over a 24-hour period. (Woodcock)

**AUF:** No. AUF agrees with the definition with the exceptions that: (1) the definition should not exclude excessive unaccounted for water; and (2) the provision addressing the inclusion of fire flow should be amended to read: "When fire flow is provided, an appropriate fire flow or a minimum of either the fire flow required by the local governmental authority or 2 hours at 500 gallons per minute." (Guastella)

**UI:** Yes. (Seidman)

**STAFF:** Yes, the definition of peak demand for a water system as proposed in Rule 25-30.4325(1)(c) should be adopted. (Redemann)

**ISSUE 4:** Should the definition of peak demand for storage as proposed in Rule 25-30.4325(1)(d) be adopted?

**POSITIONS**

**OPC:** No. Subsection (1) (d) should be amended to read:  
Peak demand for storage includes 25% of the utility's maximum day demand, excluding excessive unaccounted for water, plus an allowance for fire flow, where provided, a minimum of either the fire flow required by local governmental authority or 2 hours at 500 gallons per minute, and a growth allowance based on the requirements in Rule 25-30.431, F.A.C. (Woodcock)

**AUF:** No. AUF agrees with the definition with the exceptions that: (1) the definition should not exclude excessive unaccounted for water; and (2) the provision addressing the inclusion of fire flow should be amended to read: "When fire flow is provided, an appropriate fire flow or a minimum of either the fire flow required by the local governmental authority or 2 hours at 500 gallons per minute." (Guastella)

**UI:** Yes. (Seidman)

**STAFF:** Yes, the definition of peak demand for storage as proposed in Rule 25-30.4325(1)(d) should be adopted. (Redemann)

**ISSUE 5:** Should the definition of excessive unaccounted for water as proposed in Rule 25-30.4325(1)(e) be adopted?

**POSITIONS**

**OPC:** No. Subsection (1) (e) should be amended to read:  
Excessive unaccounted for water (EUW) is unaccounted for water in excess of 10 percent of the amount produced. Any water claimed as accounted for that was used for flushing, fire fighting, and water lost through line breaks must be documented by complete records of these flow losses. (Woodcock)

**AUF:** If the Commission determines that it is appropriate to exclude excessive unaccounted for water in the definitions of peak demand for a water treatment system and peak demand for storage, the definition of excessive unaccounted for water should be amended to read: "Excessive unaccounted for water (EUW) is finished potable water produced (delivered to the system) that exceeds 10% of that production quantity." (Guastella)

**UI:** Yes. Alternatively, the proposed rule could be changed for clarification purposes to read "Excessive unaccounted for water (EUW) is unaccounted for water in excess of 10 percent of the amount produced." (Seidman)

**STAFF:** Yes, the definition of excessive unaccounted for water as proposed in Rule 25-30.4325(1)(e) should be adopted. Alternatively, the proposed rule could be changed for clarification purposes to read "Excessive unaccounted for water (EUW) is unaccounted for water in excess of 10 percent of the amount produced." (Redemann)

**ISSUE 6:** Should the Commission's used and useful evaluation include a determination of prudence and consider economies of scale as proposed in Rule 25-30.4325(2) and be adopted?

**POSITIONS**

**OPC:** No. Pursuant to Chapter 367.081(3), F.S., the Commission has always considered the prudent costs of providing service when fixing rates. Consideration of economies of scale, to the extent its value is documented, may also be considered under the alternative calculation provision provided by subsection (2) of OPC's recommended rule. (Woodcock)

**AUF:** Yes. (Guastella)

**UI:** Yes. In addition, UI agrees with moving the provisions in subsection (11) of the proposed rule to subsection (2). (Seidman)

**STAFF:** Yes, the Commission's used and useful evaluation should include a determination of prudence and consider economies of scale as proposed in Rule 25-30.4325(2) and should be adopted. Staff further agrees with OPC and the industry regarding moving the provisions in subsection (11) of the proposed rule to subsection (2). (Redemann)

**ISSUE 7:** Should alternative calculations for water treatment systems and storage facilities be allowed as proposed in Rule 25-30.4325(3) and be adopted?

**POSITIONS**

**OPC:** No. Subsection (3) should be amended to read:  
If any party believes a used and useful calculation should be utilized in a specific case which differs from the provisions of this rule, such calculation may be provided along with supporting documentation. The party proposing the alternative calculation shall have the burden to prove that the alternative calculation is more appropriate for the specific case than application of the calculation provided by this rule. Examples of such specific cases that might warrant the use of alternative used and useful calculations include but are not limited to: economies of scale, service area restrictions, factors involving treatment capacity, well drawdown limitations, changes in flow due to conservation or a reduction in the number of customers, and alternative peaking factors.

In determining an alternative peaking factor for a specific system, consideration shall be given to the size and character of the system service area. For larger systems with a diverse customer base a lower peaking factor shall be used and conversely for smaller systems with a uniform customer base a higher peaking factor shall be used. With regard to service area restrictions, if a system is built out, with no apparent potential for expansion, and is prudently designed, then the system may be considered 100% used and useful. (Woodcock)

**AUF:** Yes. (Guastella)

**UI:** Yes. UI further agrees to move alternatives and limiting factors found in subsections (6) and (11) of the rule, such as service area restrictions, treatment capacity, and well draw down limitations, to subsection (3). (Seidman)

**STAFF:** Yes, alternative calculations for water treatment systems and storage facilities should be allowed as proposed in Rule 25-30.4325(3) and should be adopted. Staff further agrees with OPC's proposal to move alternatives and limiting factors found in subsections (6) and (11) of the rule, such as service area restrictions, treatment capacity, and well draw down limitations, to subsection (3). (Redemann)

**ISSUE 8:** Should the conditions for considering a water treatment system 100% used and useful as proposed in Rule 25-30.4325(4) be adopted?

**POSITIONS**

**OPC:** No. OPC does not agree that the conditions prescribed in subsections (4) (a) – (c) of the Commission's Proposed Rule should cause a treatment system to be considered 100% used and useful. If a system is built-out, with no apparent potential for expansion, and is prudently designed, then the system may be considered to be 100% used and useful in OPC's reworded subsection (3) of the Proposed Rule (OPC (2)), which permits an alternative calculation based on service area restrictions. (Woodcock)

**AUF:** Yes. (Guastella)

**UI:** Yes. (Seidman)

**STAFF:** Yes, the conditions for considering a water treatment system 100% used and useful as proposed in Rule 25-30.4325(4) should be adopted. (Redemann)

**ISSUE 9:** **PROPOSED STIPULATION** – See Section X., Proposed Stipulations

**ISSUE 10:** Should the definition of firm reliable capacity for various combinations of water treatment systems and storage facilities as proposed in Rule 25-30.4325(6) be adopted?

**POSITIONS**

**OPC:** No. Subsection (6) should be amended to read:  
The firm reliable capacity of a water treatment system is equivalent to the pumping capacity of the wells, excluding the largest well for those systems with more than one well.  
(a) For systems with no storage, the firm reliable capacity shall be expressed in gallons per minute.

- (b) For systems with storage, the firm reliable capacity shall be expressed as gallons per day, based upon 24 hours of pumping, unless there is a documented restriction to the hours of pumping as required by the Water Management District or other regulatory body, in which case the restriction shall apply. (Woodcock)

**AUF:** Yes. (Guastella)

**UI:** Yes. Further, UI agrees to move alternative and limiting factors found in subsections (6) and (11) of the rule, such as service area restrictions, treatment capacity, and well draw down limitations, to subsection (3). (Seidman)

**STAFF:** Yes, the definition of firm reliable capacity for various combinations of water treatment systems and storage facilities as proposed in Rule 25-30.4325(6) should be adopted. Further, staff agrees with OPC's proposal to move alternatives and limiting factors found in subsections (6) and (11) of the rule, such as service area restrictions, treatment capacity, and well draw down limitations, to subsection (3). (Redemann)

**ISSUE 11:** Should the basis for expressing peak demand as proposed in Rule 25-30.4325(7) be adopted?

### **POSITIONS**

**OPC:** No. Subsection (7) should be amended to read:  
Peak demand includes peak hour demand for a water treatment system with no storage capacity and peak day demand for a water treatment system with storage capacity.

(a) Peak hour demand, expressed in gallons per minute, shall be calculated as follows:

1. The single maximum day (SMD) in the test year where there is no unusual occurrence on that day, such as a fire or line break, less excessive unaccounted for water divided by 1440 minutes in a day times a peaking factor of 2  $(((SMD-EUW)/1,440) \times 2]$ , or

2. The average of the 5 highest days (AFD) within the maximum month of the test year, less excessive unaccounted for water divided by 1440 minutes in a day times a peaking factor of 2  $(((AFD-EUW)/1,440) \times 2]$ .

(b) Peak day demand, expressed in gallons per day, shall be calculated as follows:

1. The single maximum day in the test year, if there is no unusual occurrence on that day, such as a fire or line break, less excessive unaccounted for water (SMD-EUW), or

2. The average of the 5 highest days within the maximum month of the test year, less excessive unaccounted for water (AFD-EUW). (Woodcock)

**AUF:**

No. These provisions should be amended to: (1) strike the reduction for excessive unaccounted for water; and (2) use the single maximum day unless there is an unusual occurrence on that day or the next highest maximum day that does not reflect an unusual occurrence on such day, without the limitation that such single maximum day or next highest maximum day have occurred in the test year. (Guastella)

**UI:**

Yes. Alternatively, if piecemeal changes are to be made to subsection (7), then subsections (7)(a)1. and (7)(b)1. should be modified to define the peak hour and peak day demands as based on the single maximum day in which there is no unusual occurrence, and subsections (7)(a)2. and 3. and subsections (7)(b)2. and 3. should be removed. (Seidman)

**STAFF:**

Yes, the basis for expressing peak demand as proposed in Rule 25-30.4325(7) should be adopted. (Redemann) Further, non-testifying staff agrees that Rule 25-30.4325(7)(a)(2) and (7)(b)(2) could be changed to reflect the use of a maximum month instead of a 30-day period for determining a peak day.

**ISSUE 12:**

**PROPOSED STIPULATION** – See Section X., Proposed Stipulations

**ISSUE 13:**

**PROPOSED STIPULATION** – See Section X., Proposed Stipulations

**ISSUE 14:**

Should the method of determining adjustments to plant and operating expenses because of excessive unaccounted for water as proposed in Rule 25-30.4325(10) be adopted?

**POSITIONS**

**OPC:**

No. The Commission should be able to consider other relevant factors in determining appropriate used and useful calculations as provided by OPC's reworded subsection (3) of the proposed rule (OPC (2)). (Woodcock)

**AUF:** No. There should be no adjustment to plant (only to operating expenses) based on excessive unaccounted for water. The more appropriate response is to conduct a cost/benefit analysis to determine if the cause(s) of the excessive unaccounted for water should be repaired. (Guastella)

**UI:** Yes. (Seidman)

**STAFF:** Yes, the method of determining adjustments to plant and operating expenses as proposed in Rule 25-30.4325(10) should be adopted. (Redemann)

**ISSUE 15:** Should the Commission's consideration of other relevant factors as proposed in Rule 25-30.4325(11) be adopted?

**POSITIONS**

**OPC:** No. The Commission should be able to consider other relevant factors in determining appropriate used and useful calculations as provided by OPC's reworded subsection (3) of the proposed rule (OPC (2)). (Woodcock)

**AUF:** Yes. (Guastella)

**UI:** Yes. Further, UI agrees to moving the provisions in subsection (11) of the proposed rule to subsection (2). (Seidman)

**STAFF:** Yes, the Commission's consideration of other relevant factors as proposed in Rule 25-30.4325(11) should be adopted. Further, staff agrees with OPC and the industry regarding moving the provisions in subsection (11) of the proposed rule to subsection (2). Staff believes this issue should be stipulated as part of subsection (2). (Redemann)

**ISSUE 16:** Should there be a separate used and useful calculation for high service pumping?

**POSITIONS**

**OPC:** Yes. (Woodcock)

**AUF:** There should not be a separate rule provision providing for a used and useful calculation for high service pumping. In most cases, there is no need to perform such a calculation. Further, in such instances where a separate used and useful calculation for high service pumps may be

appropriate, such factors as the configuration of the piping and the specific operation of the high service pumps must be taken into account, thereby making it impractical to develop a formulaic rule for used and useful for high service pumps. (Guastella)

**UI:** No. For the default rule, a separate calculation is not needed. It is included in the calculation of storage in subsection (8). If a utility wishes to make a separate calculation, it may do so under the provisions of proposed subsection (3). (Seidman)

**STAFF:** No. The cost of high service pumps is minimal compared to the cost of storage. (Redemann)

**ISSUE 17:** If there is a separate calculation for high service pumping, what is the proper definition for high service pumping?

**POSITIONS**

**OPC:** The proper definition is provided by revised subsection (1)(c) of OPC's recommended rule. High Service pumping includes those pumps after storage that deliver potable water to a transmission and distribution system. (Woodcock)

**AUF:** See AUF's response to Issue 16. Because no separate rule is necessary for high service pumps, no definition is necessary. (Guastella)

**UI:** For the default rule, a separate definition is not needed. High service pumping is included as a part of storage in subsection (1)(b). If a utility wishes to make a separate determination, it may do so under the provisions of subsection (3). (Seidman)

**STAFF:** If there is a separate calculation for high service pumping, staff agrees with OPC's definition of high service pumping.

**ISSUE 18:** If there is a separate calculation for high service pumping, what is the proper definition for peak demand for high service pumping?

**POSITIONS**

**OPC:** The proper definition is provided by revised subsection (1)(f) of OPC's recommended rule. Peak demand for high service pumping includes the greater of:

1. The utility's maximum hour demand, less excessive unaccounted for water, plus a growth allowance based on the requirements of Rule 25-30.431, F.A.C., or

2. The utility's maximum day demand, excluding excessive unaccounted, for water, plus a growth allowance based on the requirements of Rule 25-30.431, F.A.C., and where provided, a minimum of either the fire flow required by local government authority or 2 hours at 500 gpm. (Woodcock)

**AUF:** See AUF's response to Issue 16. Because no separate rule is necessary for high service pumps, no definition is necessary. (Guastella)

**UI:** For the default rule, a separate definition is not needed. High service pumping is included in the definition of storage in subsection (1)(b). If a utility wishes to make a separate determination, it may do so under the provisions of subsection (3). (Seidman)

**STAFF:** If there is a separate calculation for high service pumping, peak demand should be determined consistent with subsection (7)(a) of the proposed rule.

**ISSUE 19:** If there is a separate calculation for high service pumping, how should the firm reliable capacity of high service pumping be determined?

**POSITIONS**

**OPC:** As provided by subsection (9) of OPC's recommended rule:  
The firm reliable capacity of high service pumping is equivalent to the pumping capacity of the high service pumps, excluding the largest high service pump for those systems with more than one high service pump. (Woodcock)

**AUF:** The firm reliable capacity of the high service pumps should be determined by subtracting the capacity of the pump with the highest capacity from the total capacity of all pumps, and determining the reliable capacity of the remaining pumps, taking into account that the sum of the rated capacity of each pump may be more than the combined capacity of the pumps when operated at the same time, and that there may be limiting factors attributable to the actual operation of the remaining pumps. (Guastella)

**UI:** For the default rule, a separate determination is not needed. It is included in the determination of storage in subsection (9). If a utility wishes to make a separate determination, it may do so under the provisions of subsection (3). (Seidman)

**STAFF:** If there is a separate calculation for high service pumping, staff agrees with OPC's recommended language.

**ISSUE 20:** If there is a separate calculation for high service pumping, how should the used and usefulness of high service pumping be determined?

**POSITIONS**

**OPC:** As provided by revised subsection (8) of OPC's recommended rule:  
The used and useful percentage of high service pumping is determined by dividing the peak demand for high service pumping as defined in this rule by the firm reliable capacity of high service pumps.

(a) Peak hour demand, expressed in gallons per minute, shall be calculated as follows:

1. The single maximum day (SMD) in the test year, where there is no unusual occurrence on that day, such as a fire or line break, less excessive unaccounted for water, divided by 1440 minutes in a day times a peaking factor of 2  $[\frac{(SMD-EUW)}{1,440} \times 2]$ , or

2. The average of the 5 highest days (AFD) within the maximum month of the test year, less excessive unaccounted for water, divided by 1440 minutes in a day times a peaking factor of 2  $[\frac{(AFD-EUW)}{1,440} \times 2]$ .

(b) Maximum day demand, expressed in gallons per day, shall be calculated as follows:

1. The single maximum day in the test year, if there is no unusual occurrence on that day, such as a fire or line break, less excessive unaccounted for water (SMD-EUW), or

2. The average of the 5 highest days (AFD) within the maximum month of the test year, less excessive unaccounted for water (AFD-EUW).  
(Woodcock)

**AUF:** The used and useful percentage for high service pumps should be calculated by dividing the greater of the peak hour demand or maximum day demand plus fire demand, in gallons per minute, by the reliable capacity of the high service pumps. (Guastella)

**UI:** For the default rule, a separate determination is not needed. It is included in the determination of storage in subsection (9). If a utility wishes to make a separate determination, it may do so under the provisions of subsection (3). (Seidman)

**STAFF:** If there is a separate calculation for high service pumping, staff agrees with OPC's recommended language. One high service pump is 100% used and useful.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Andrew T. Woodcock, P.E., M.B.A.	OPC	ATW-1	Resume of Andrew T. Woodcock
Andrew T. Woodcock, P.E., M.B.A.	OPC	ATW-2	OPC Recommended Rule No. 25-30.4325, F.A.C.
John F. Guastella, P.E.	AUF	Attach- ment 1	Qualifications and Experience
John F. Guastella, P.E.	AUF	JFG-1	Guide for Determination of Needed Fire Flow
John F. Guastella, P.E.	AUF	JFG-2	Standard Schedule for Grading Cities and Towns of the United States With Reference to Their Fire Defense and Physical Conditions
John F. Guastella, P.E.	AUF	JFG-3	Water Rates – AWWA Manual M1 Fourth Edition
Frank Seidman, P.E.	UI	FS-1	Summary of Cases
Frank Seidman, P.E.	UI	FS-2	PSC Staff Memorandum, February 7, 1983
Frank Seidman, P.E.	UI	FS-3	PSC Staff Memorandum, April 14, 1975
Frank Seidman, P.E.	UI	FS-4	PSC Order No. 7684 (issued March 14, 1977) (Excerpt)
Frank Seidman, P.E.	UI	FS-5	Mark Up of Proposed Rule 25-30.4325
Dwight T. Jenkins, Esq., P.G.	Staff	DTJ-1	Curriculum Vitae of Dwight T. Jenkins, Esq., P.G.

<u>Witness</u>	<u>Proffered</u> <u>By</u>		<u>Description</u>
Richard P. Redemann, P.E.	Staff	RPR-1	Resume of Richard Paul Redemann, P.E.
Richard P. Redemann, P.E.	Staff	RPR-2	Proposed Rule No. 25-30.4325
Richard P. Redemann, P.E.	Staff	RPR-3	AWWA M32
Richard P. Redemann, P.E.	Staff	RPR-4	St. Johns River Water Management District Water Conservation Plan
Richard P. Redemann, P.E.	Staff	RPR-5	SWFWMD Water Use Permit Information Manual
Richard P. Redemann, P.E.	Staff	RPR-6	Recommended Standards for Water Works
Richard P. Redemann, P.E.	Staff	RPR-7	AWWA Water Distribution Systems Handbook and U.S. Army Corp of Engineers Design of Small Water Systems
Richard P. Redemann, P.E.	Staff	RPR-8	Matrix

Rebuttal

None

Surrebuttal                      AUF              JFG-4              AMMA M-5 Manual (Excerpts)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X.      PROPOSED STIPULATIONS

1. Rule 25-30.4325(1)(a) should read “A water treatment system includes all facilities, such as wells and treatment facilities, excluding storage and high service pumping, necessary to pump and treat potable water.” (Issue 1)
2. Rule 25-30.4325(5) should read “The used and useful calculation of a water treatment system is made by dividing the peak demand by the firm reliable capacity of the water treatment system.” (Issue 9)

3. Rule 25-30.4325(8) should read “The used and useful calculation of storage is made by dividing the peak demand by the usable storage of the storage tank. Usable storage capacity less than or equal to the peak day demand shall be considered 100 percent used and useful. A hydropneumatic tank is not considered usable storage.” (Issue 12)
4. Rule 25-30.4325(9) should read “Usable storage determination shall be as follows:
  - (a) An elevated storage tank shall be considered 100 percent usable.
  - (b) A ground storage tank shall be considered 90 percent usable if the bottom of the tank is below the centerline of the pumping unit.
  - (c) A ground storage tank constructed with a bottom drain shall be considered 100 percent usable, unless there is a limiting factor, in which case the limiting factor will be taken into consideration.” (Issue 13)

#### XI. PENDING MOTIONS

A written ruling on AUF’s Motion for Leave to File Surrebuttal Testimony and Request for Expedited Ruling, filed December 27, 2007, was pending at the time of the Prehearing Conference.

#### XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

#### XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

#### XIV. RULINGS

1. Opening statements, if any, shall not exceed ten minutes per party.

2. AUF's Motion for Leave to File Surrebuttal Testimony and Request for Expedited Ruling, filed December 27, 2007, is granted.

It is therefore,

ORDERED by Chairman Matthew M. Carter II, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Matthew M. Carter II, as Prehearing Officer, this 22nd day of January, 2008.



MATTHEW M. CARTER II  
Chairman and Prehearing Officer

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.