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Subject: Docket No. 070183-WS/Proposed Used & Useful Rule
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- b. Docket No. 070183-WS/ Proposed Adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations

- c. Utilities, Inc.

- d. 22 pages

- e. Post Hearing Brief

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FPSC-COMMISSION CLERK

BEFORE THE 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

POST HEARING STATEMENT OF ISSUES AND POSITIONS
OF UTILITIES, INC.

Pursuant to Order No. PSC-08-0043-PHO-WS, issued January 22, 2008, Utilities, Inc. ("Utilities, Inc." or the "Company"), by and through its undersigned counsel, files its Post Hearing Statement of Issues and Positions:

INTRODUCTION

The basic premise in adopting a rule to determine the amount of water treatment plant and storage that is used and useful in providing service to customers is to adopt a rule with the broadest applicability, and thus reduce rate case expense, while providing the flexibility to address unique situations.

The proposed rule is the result of workshops with input from Office of Public Counsel ("OPC"), the regulated utilities (through participation of Utilities, Inc., and Aqua Florida Utilities, Inc.), the Florida Department of Environmental Protection ("DEP") and the Water Management Districts. (Tr. 186) All of the regulated utilities' positions were not included in the proposed rule, nor were all of those proposed by OPC. The proposed Rule represents a reasonable compromise of the positions of the Staff, OPC and regulated utilities. As such, Utilities, Inc., was willing to accept the compromise rule.¹ (Tr. 186)

¹ A number of technical revisions were stipulated to in the proceeding, and as such are acceptable to Utilities, Inc.

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FPSC-COMMISSION CLERK

The Staff designed the proposed Rule to codify the Commission's policies on used and useful calculations for water treatment systems as established in prior litigated cases (Tr. 270). Even OPC's witness, Mr. Woodcock, agreed that the general purpose of rulemaking is to codify agency policies that have been developed through litigation. (Tr. 71) However, Mr. Woodcock admitted that he does not have sufficient experience with the Commission to be able to apply that purpose to the proposed Rule. (Tr. 68, 103) The DEP, which has worked with the PSC and its Staff for over two years on this proposed Rule and has submitted comments on two previous occasions, also supports the proposed Rule although it recommends using peak instantaneous demand instead of peak hour demand in Section (7) of the proposed Rule. (Tr. 252)

OPC was not satisfied that all of its positions were not adopted as evidenced by the fact that virtually all provisions of the proposed Rule are challenged in this proceeding which OPC initiated. While the proposed Rule as modified by the stipulated changes is acceptable to Utilities, Inc., if this Commission is inclined to make modifications, then Utilities, Inc., believes other changes should be made as well, as addressed in more detail in its arguments on Issues 6 and 11.

WITNESSES

Andrew Woodcock testified on behalf of OPC. While Mr. Woodcock is a Professional Engineer and has some limited experience in the design of portions of water systems and storage facilities (Ex. 2), he admitted that he did not take into account used and useful concepts in such designs. (Tr. 92) Most of his work has been on behalf of governmental utilities that do not establish rates based upon a used and useful concepts.

(Tr. 68) Mr. Woodcock has never testified before the Commission on used and useful issues. (Tr. 68) In fact, he acknowledged that he did not have the Commission experience to opine regarding how the Commission has typically addressed used and useful evaluations in past rate cases. (Tr. 103), nor the magnitude of rate case expense as it relates to the used and useful evaluation. (Tr. 71) Mr. Woodcock sponsored one Exhibit (Ex. 2). In evaluating the positions taken by Mr. Woodcock, his experience should be compared to that of the witnesses appearing on behalf of Utilities, Inc., Aqua Utilities Florida, Inc., and the Staff.

Aqua Utilities Florida, Inc., presented the testimony of John Guastella, a Professional Engineer who has twenty-nine years rate setting experience, including sixteen as a regulator. (Tr. 122, Ex. 4) Mr. Guastella has performed many used and useful evaluations for rate cases before this Commission. Mr. Guastella sponsored five Exhibits (Ex. 4-7, 22).

Frank Seidman testified on behalf of Utilities, Inc. He is a Professional Engineer and he has completed graduate level courses in economics, including public utility economics. Mr. Seidman has over forty years of experience in the field of utility regulation, including nine years as a member of the Staff of this Commission. Mr. Seidman probably has the most Florida PSC experience of the witnesses to testify in this proceeding. (Ex. 8) Mr. Seidman sponsored five Exhibits (Ex. 8-12).

Staff presented testimony from Van Hoofnagle, a Professional Engineer with the Florida Department of Environmental Protection, who sponsored no exhibits; Dwight Jenkins, a Professional Geologist with the St. Johns River Water Management District,

who sponsored one Exhibit (Ex. 13); and Richard Redemann of the Staff who sponsored eight Exhibits (Ex. 14-21). Mr. Redemann is a Professional Engineer and has worked at the Commission since 1984. (Tr. 267) Mr. Redemann has extensive experience in making used and useful calculations in rate cases and has testified before the Commission as an expert witness on many occasions. (Tr. 267-268, Ex. 14)

UTILITIES, INC.'S STATEMENT OF POSITIONS

I. LEGAL ISSUES:

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

OPC bears the burden of proof because it is the Petitioner in this proceeding. Any intervener or Staff who takes the position to change a portion of the proposed rule bears the burden of proof that the provision it seeks to change is arbitrary or capricious.

This hearing was held pursuant to OPC's request for a "draw out" of the rulemaking proceeding pursuant Section 120.54 (3)(c)2, Florida Statutes. As such, this proceeding was held under the provisions of Sections 120.569 and 120.57, Florida Statutes. In presiding in this instant proceeding, this Commission is exercising the function of a hearing officer, and after exercising that function, then the rulemaking proceeding resumes.

In Adam Smith Enterprises, Inc. v. Department of Environmental Regulation, 553 So. 2d 1260 (Fla. 1st DCA 1989), the court cited with approval from the hearing officer's order in defining his standard of review of the evidence in an administrative hearing on a proposed rule, wherein the hearing officer stated:

"The hearing officer's standard of review is whether the rule constitutes an invalid exercise of delegated legislative authority . . ." at p. 1274

He further stated that in determining the validity of an agency's proposed rule, the hearing officer's consideration is whether the proposed rule is arbitrary or capricious.

In Agrico Chemical Co. v. Department of Environmental Regulation, 365 So. 2d 759 (Fla. 1st DCA 1978), *cert den.*, 376 So. 2d 74 (Fla. 1979), the court held that in demonstrating that a proposed rule is arbitrary or capricious, the challenger has the burden to do so by the preponderance of the evidence. The court stated that the challenger's burden of demonstrating the proposed rule to be arbitrary or capricious "is a stringent one indeed." *Id.* at 763. An arbitrary decision is one not supported by facts or logic, or despotic, and capricious action is one which is taken without thought or reason or irrationally. *Id.* at 763.

So while OPC may think its positions are more reasonable than those contained in the proposed Rule, that is not the issue. OPC must prove by the preponderance of the evidence that the provisions of the proposed Rule it challenges are arbitrary or capricious. That same standard is applicable to Aqua as to the provisions of the proposed Rule it seeks to change. The very nature of this rulemaking process, which spanned several years with input from all affected parties as well as other state agencies, belies the argument that the proposed Rule is without thought or reason or irrational, or not supported with facts or logic or despotic.

II. TECHNICAL ISSUES:

ISSUE 1: Should the definition of a water system proposed as 25-30.4325 (1)(a) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

*The Commission adopted a stipulation whereby Rule 25-30.4325(1)(a) would 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.” (Tr. 16)*

ISSUE 2: Should the definition of storage facilities proposed as 25-30.4325 (1)(b) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

Yes. The proposed rule provides a proper definition of storage facilities.

Argument: OPC wants to remove high service pumps from the definition of storage facilities and require a separate used and useful evaluation for high service pumps. OPC admits that evaluating high service pumps separately adds a whole new set of calculations. (Tr. 8) This is further complicated for systems with more than one high service pump. (Tr. 77-78, 166). As Mr. Guastella points out, to evaluate high service pumps separate from storage would require that the used and useful evaluation take into account professional judgment and analysis that are not readily convertible into a single formula as Mr. Woodcock suggests. (Tr. 129) To do so is contrary to the intent to simplify the used and useful evaluations and minimizing rate case expense for such evaluations. Mr. Seidman correctly points out, and Mr. Redemann concurs, that in those instances where it might be appropriate to consider high service pumping separate from storage that the separate evaluation could be done under subsection (3) of the proposed Rule. (Tr. 196-197, 280)

As Mr. Guastella and Mr. Redemann pointed out, high service pumping is a minor cost in relation to total storage cost. (Tr. 167, 280) In fact, Mr. Redemann’s analysis concluded that pumping costs were .3 percent of total storage costs, and a separate evaluation would create additional work (and rate case expense) without getting any value for that work. (Tr. 294)

This issue boils down to the policy question of whether utilities treating high service pumping separate from storage should be the rule or the exception. The more reasoned analysis supports the proposed Rule as written which provides a straight forward methodology. (Tr. 196)

ISSUE 3: Should the definition of peak demand for a water system proposed as 25-30.4325 (1)(c) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

Yes. The proposed rule provides a proper definition of peak demand for a water system.

Argument: While Mr. Woodcock proposes a rewrite of this provision to provide “for the specific cases when the maximum hours and maximum day demands should be used” (Tr. 48), actually, the proposal would also eliminate fire flow for systems with storage. (Tr. 198) If the purpose is truly to address when to use maximum hour versus maximum day demand, then that is addressed already in subsection (7).

Mr. Woodcock’s position would also ignore fire flow during the peak periods (Tr. 100) even though he admits that the water to fight the fire if the system has no storage is from the wells. (Tr. 101) Mr. Woodcock would have the utilities assume the risk that a fire will not occur during the peak period. Such a suggestion is fool-hearty and should be rejected. In fact, in written comments by DEP in August, 2006, in this rulemaking proceeding, DEP observed:

When calculating maximum day demand, a fire should not be considered an anomaly. Fires happen, and water systems often must be sized to provide fire protection. Even if a water system has sufficient fire storage, source and treatment facilities must be capable of replenishing the fire storage on a daily basis so that fire storage is available on any given day.

Thus maximum day demand must include fire-flow demand (fire flow rate times fire flow duration).

Mr. Guastella takes exception with fire flow being limited to either the fire flow required by local government or 2 hours at 500 gallons per minute. He correctly points out that local governments only establish fire flow equivalents for single hydrants and do not consider the fire flow requirement of the entire system. (Tr. 150) In order to provide fire protection throughout the system, he recommends utilizing the Insurance Service Organization ("ISO) requirements that address structures rather than single hydrants. (Tr. 127, Ex. 5) In fact, the AWWA Manual for Distribution Network Analysis for Water Utilities (Ex. 16) seems to support this position. Further, as Mr. Guastella points out, the proposed Rule does not account for multiple hydrants being used to fight a fire, or for coincidental fires. (Tr. 128)

While Utilities, Inc., believes Mr. Guastella's points have merit, their application in the context of a used and useful evaluation would involve greater subjectivity and increase, rather than reduce, professional testimony in rate proceedings and, thus, would increase rate case expense.

ISSUE 4: Should the definition of peak demand for storage proposed as 25-30.4325 (1)(d) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

Yes. The proposed rule provides a proper definition of peak demand for storage.

Argument: Mr. Woodcock proposes to change this provision to reduce peak storage to 25% of the utilities' maximum day demand. (Tr. 50) In doing so, Mr. Woodcock relies solely upon DEP Rule 62-555.320, F.A.C., which contains minimum

storage requirements for equalization. The determination of used and useful facilities is not simply a design concept, and this Commission is not limited to evaluating a water system's used and usefulness on strict minimum design concepts. As was acknowledged by Mr. Woodcock, used and useful is not an engineering concept. (Tr. 93)

The 25% of maximum day demand as set forth in the DEP Rule referred to by Mr. Woodcock is only for operational equalization. Storage tanks serve purposes other than operational equalization. (Tr. 201-203, 279-280) Even Mr. Woodcock under cross-examination admitted that storage is to provide for fire protection and emergencies in addition to fire flow equalization (Tr. 82), and eventually acknowledged that it would be reasonable to allow twice as much storage as he proposed in his direct testimony. (Tr. 102)

As Mr. Guastella points out, the actual demand for storage, fire flow, equalization, peak demand, fires and emergencies would vary from system to system and consultant to consultant. (Tr. 130) This would require a more detailed analysis and increase in rate case expense without deriving a substantial benefit from such analysis. As such, Mr. Guastella recommends maximum day demand as a reasonable criteria for determining used and useful for storage. (Tr. 131)

Mr. Seidman points out that the 25% of maximum day demand is the minimum allowed by DEP. (Tr. 201) As Mr. Hoofnagle testified, DEP would approve a permit that exceeded their minimum standards. (Tr. 251) As Mr. Seidman further testified, emergency storage is in addition to fire flow and protects against events such as power outages, large main breaks and unexpected shutdown or failures of the treatment plant

or water supply. (Tr. 202) The determination of such amount is a judgment decision since design resources do not offer estimates of the ranges of such amounts. (Tr. 202) There is support in the literature for storage including fire flow and equalization equal to maximum day demand as set forth in the proposed Rule. (Tr. 202-203)

In supporting the proposed Rule, Mr. Redemann relies upon the AWWA Water Distribution System Handbook and U.S. Army Corp of Engineers Design of Small Water Systems Manual. (Tr. 279; Ex. 16, 20) The latter document articulates that the purpose of storage is “to meet peak demands (including fire flow), allow continued service when the supply is interrupted, equalize system pressure, eliminate continuous pumping, and facilitate the use of economical pipe sizes.” In establishing the annual storage, this publication suggests it is a minimum of one-half average daily use to 3 times average daily use. The proposed Rule provides for storage at the low end of this scale and is reasonable. Mr. Redemann also points out that this Commission has in previous rate cases recognized that one full days’ storage is needed, and this Commission should not recede from that precedence. (Tr. 279)

ISSUE 5: Should the definition of excessive unaccounted for water proposed as 25-30.4325 (1)(e) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

Yes. The proposed rule provides a proper definition of excessive unaccounted for water.

Argument: Mr. Woodcock proposes to add the superfluous and ambiguous requirement that a utility be required to document unaccounted for water with “complete records.” (Tr. 52) First, as Mr. Woodcock acknowledged, existing Commission Rules already place the burden of proof on a utility as to each MFR schedule

and the used and useful evaluation in an MFR schedule. (Tr. 95) In addition, DEP requires unmetered uses to be recorded by the utility. (Tr. 103)

Mr. Woodcock's testimony on cross-examination also acknowledges the ambiguous nature of the term "complete records." As he admitted, that term is not an engineering concept where one could review engineering literature for a definition. (Tr. 95) He further admitted that equally qualified professionals could have different definitions of the term (Tr. 95), and that the documentation would vary from system to system and ~~very~~ vary depending upon what type of accounting there is of the water use. (Tr. 102-103)

The nature of unmetered uses such as flushing, line breaks and fires do not lend themselves to exact documentation. (Tr. 131) Values of unaccounted for water range from 4-30 percent, although 10-15 percent is more prevalent. (Tr. 274-275, Ex. 16) The proposed Rule and past Commission practice is to allow 10% (Tr. 274), which is the lower end of the prevalent range. Mr. Seidman points out that water used for flushing, fire fighting, line breaks and the like are identified in the MFRs as "other uses," and that pursuant to Commission Rule 25-30.450, F.A.C., utilities are already responsible for supporting all schedules submitted in a rate filing. (Tr. 209) Had Mr. Woodcock had any actual Commission experience he would have been aware of this requirement. In summary, there is no need for the additional ambiguous language.

Mr. Guastella asserts that there should be no exclusion from peak demand for the water treatment system and storage for unaccounted water. (Tr. 126) Mr. Woodcock admits that all systems experience unaccounted for water. (Tr. 89) He further admits

that this water tends to increase with the age of the system, but the original cost does not change. (Tr. 89) It is because the cost of the system does not change due to excessive unaccounted for water that Mr. Guastella opines that an adjustment such as proposed is not appropriate. (Tr. 138-139, 156)

This Commission already addresses excessive unaccounted for water by reducing the variable cost of providing water, such as chemical and power expense. (Tr. 155) Mr. Guastella asserts that excessive unaccounted for water is an operating expense issue and not a rate base issue. (Tr. 156)

While Utilities, Inc., believes much of Mr. Guastella's arguments have merit, excessive unaccounted for water is generally a small part of maximum day demand (Tr. 156), and this issue should not override the compromise made by the parties drafting the provisions of the proposed Rule.

ISSUE 6: Should the Commission's used and useful evaluation include a determination of prudence and consider economies of scale as proposed in 25-30.4325 (2) in Order PSC-07-0469-NOR-WS and be adopted for a water treatment used and useful rule?

Yes. The proposed rule should include a determination of prudence and consider economies of scale in making a used and useful evaluation.

Argument: OPC's position on this issue is perplexing. Mr. Woodcock proposes eliminating this provision because it does not give clear direction as to how the issue should be addressed, and then goes on to point out that economies of scale could be handled as an alternative methodology under this proposal. (Tr. 53) Mr. Woodcock's proposed language is unnecessary and adds nothing to further define economies of scale.

Mr. Seidman points out the failing of Mr. Woodcock's position. The intent of the proposed Rule is to consider the prudence of the utilities' investment and economies of scale as a part of all used and useful evaluations, not just those proposed pursuant to an alternative calculation. (Tr. 211)

However, Mr. Seidman does concur with Mr. Woodcock to the extent that in analyzing an alternative calculation under subsection (3) that the following language be added at the end:

Examples of factors that are appropriate for consideration in proposing an alternative calculation include, but are not limited to, service area restrictions, factors involving treatment capacity, well drawdown limitations and change in flow due to conservation or a reduction in the number of customers.

ISSUE 7: Should alternatives calculations for water treatment systems and storage facilities be allowed as proposed in 25-30.4325 (3) in Order PSC-07-0469-NOR-WS and be adopted for a water treatment used and useful rule?

Yes. The proposed rule should allow alternative calculations for water treatment systems and storage facilities.

Argument: OPC suggests that the proposed Rule requires clarification that any party may suggest alternative used and useful calculations, and that additional language be added to provide examples. (Tr. 53-54) While Utilities, Inc., agrees with the additional language to provide examples², it is unnecessary to make the other change. As Mr. Guastella correctly points out, it is always the utility's burden to justify its proposed rates and that any party can address any aspect of the utility's rate filing. (Tr. 132) Mr. Seidman notes that the proposed Rule is in the part of Chapter 25-30, F.A.C.,

² See Issue 6 above.

that addresses the responsibilities of a utility in a rate filing, and will not prohibit the Staff, OPC or any other party from responding to the utility's position. (Tr. 212)

Thus, the proposed Rule provides that the protections requested by OPC. However, if the Commission is inclined to make changes to the proposed Rule, Utilities, Inc., requests the additional language set forth in Issue 6 be included.

ISSUE 8: Should the conditions for considering a water treatment system 100% used and useful as proposed in 25-30.4325 (4) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

Yes. The conditions for considering a water treatment system as 100% used and useful are proper.

Argument: Mr. Woodcock's problem with this provision is that he proposes to address these issues under his entire rewrite of the alternative calculations provision. (Tr. 54) Obviously, if his alternative calculations provision is not adopted, as it should not be, then no change should be made to this provision of the proposed Rule.

Mr. Woodcock supports his position with an illogical argument. First he says that for a water system to be 100% used and useful there must be a showing that it was designed prudently. Then he says that one of the initial steps to determine if a system is prudently designed is to perform a used and useful calculation, even though he acknowledges that engineers that design water systems do not do so based upon used and useful calculations. (Tr. 86) According to Mr. Woodcock, prudent design is based on used and useful and used and useful is based on prudent design. That is circular reasoning. In addition, Mr. Woodcock apparently fails to understand that used and useful calculations are not solely based upon minimum design criteria but also include the Commission's judgment on what is reasonable for utilities to provide service to their

customers. As Mr. Redemann correctly summarizes, the proposed Rule provides for the calculation of used and useful for a water system, and while design criteria need be considered, the Commission is not limited by such design criteria. (Tr. 288) As such, this Commission has in the past established policies through its adjudication of rate cases which are memorialized in the proposed Rule, including these three specifically enumerated instances where a water system is determined to be 100% used and useful. (Tr. 213) Mr. Redemann in his testimony cites numerous decisions of this Commission reflecting the policies articulated in this subsection. (Tr. 281-282)

ISSUE 9: Should the calculation of used and useful of a water treatment system as expressed in 25-30.4325 (5) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

The Commission adopted a stipulation whereby Rule 25-30.4325(5) would 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." (Tr. 16)

ISSUE 10: Should the definition of firm reliable capacity for various combinations of water treatment systems and storage facilities as proposed in 25-30.4325 (6) in Order PSC-07-0469-NOR-WS be adopted as a proper definition for a water treatment used and useful rule?

Yes. The proposed rule provides a proper definition of firm reliable capacity for various combinations of water treatment systems and storage facilities.

Argument: Although Mr. Woodcock also nitpicks this proposed Rule provision, his substantial disagreement is with firm reliable capacity being based upon 12 hours of pumping. (Tr. 20-21) Mr. Woodcock stands alone on this issue. Both of the Utilities' witnesses, the Staff witness and, more importantly, the Water Management District witness all supported the proposed Rule provision on firm reliable capacity. Here again, Mr. Woodcock loses sight of two critical facts. First, the purpose of the proposed Rule

is to give it the broadest application so as to reduce disputes in rate cases and, second, to memorialize policies previously established by the Commission through adjudicated rate cases. Mr. Woodcock's positions, such as on this issue, are interjected to shave percentages from the used and useful evaluation of water systems.

Mr. Woodcock admitted that wells do not actually operate 24 hours a day, seven days a week, 365 days a year. (Tr. 106, 110) He further acknowledges that the peak use of a well for 24 hours may only occur once a year. (Tr. 112)

Mr. Redemann cites numerous rate case orders of this Commission that have determined that a 12 hour day is the appropriate pumping duration in determining the firm reliable capacity of a well. (Tr. 278, 279) There has been no testimony in this proceeding to cause this Commission to recede from those decisions.

Both Mr. Seidman and Mr. Guastella point out that 12 hours of pumping reflects typical consumption characteristics and reflects a reasonable balance. (Tr. 132, 218) Mr. Jenkins, a licensed professional geologist who testified on behalf of the St. Johns River Water Management District, testified that pumping needs down time in some cases to avoid harm to the water supply. (Tr. 262) He went on to point out that a utility should have the ability under the PSC Rules to have withdrawal capacity above what is needed to meet typical water user demands, and that it is reasonable to base firm reliable capacity on the pumping duration of less than the 24 hours recommended by Mr. Woodcock. (Tr. 263) He further opined that "having all of this additional installed capacity is necessary to provide reliable service." (Tr. 264)

As Mr. Seidman points out, in those instances when 24 hour pumping is appropriate, it could be addressed as an alternative calculation. (Tr. 217) Especially in this day of stressed water resources, it is important for wells to have some down time in order for the aquifer to recharge, and 12 hours is a reasonable duration. (Tr. 217-218) The proposed Rule as currently written is more environmentally responsible and prudent for a default provision. (Tr. 218-219) As Mr. Seidman further points out, such action is more consistent with actions taken by this Commission to encourage water conservation and preserve the water supply. (Tr. 240) Mr. Redemann testified that for most water systems, pumping for 24 hours would deteriorate water quality. (Tr. 299)

Again, Public Counsel confuses engineering design with used and useful as determined by this Commission. As Mr. Seidman points out, no one has suggested that a system be designed to use the pumps only 12 hours a day. What is suggested is that in these rules, for the purpose of used and useful determination, the 12 hour criteria is a good one because it envelops all of the concerns previously addressed (Tr. 233), which include conservation considerations, environmental considerations, aquifer recharge, consumption patterns and reliability.

ISSUE 11: Should the basis for expressing peak demand as proposed in 25-30.4325 (7) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

Yes. The proposed basis for expressing peaking demand is proper.

Argument: As to the peaking factor, Mr. Woodcock in his rebuttal testimony recedes from his original position and accepts a peaking factor of 2. (Tr. 323) The issue

that remains as to this subsection is the use of a 5-day average if the single maximum day has an unusual occurrence, such as a fire or line break.

Mr. Guastella testified that there are no engineering design criteria that use a 5-day average as a surrogate for maximum day demand. (Tr. 125) The use of a 5-day average produces costs that are less than the actual costs incurred by the utility to serve its customers. (Tr. 125-126) In fact, as Mr. Seidman and Mr. Guastella testified, engineering design would be in excess of even the expected maximum day demand in order to provide a peaking factor. (Tr. 125, 241) This position was supported by Mr. Hoofnagle who testified on behalf of DEP. (Tr. 251-252)

The purpose of this provision is to establish the single maximum day demand. The utility must meet the single maximum day demand, not a 5-day average. (Tr. 221) There is no logical reason to utilize anything other than the single maximum day demand without an unusual occurrence. If the maximum day has an unusual occurrence, then you would simply go to the next highest day until you found the highest day without an unusual occurrence. (Tr. 125, 221) Mr. Redemann acknowledged that the Commission has in previous cases used the second highest day when there was an unusual occurrence in the highest day. (Tr. 306)

While Mr. Seidman acknowledged that Mr. Guastella's position to use an out of test year maximum day is logical (Tr. 242), Utilities, Inc., proposes, for simplicity sake, that should that occur it be handled as an alternative calculation.

Mr. Seidman suggests that the proposed Rule sections (7)(a) 2 and (7)(b) 2 be eliminated and that the wording in sections (7)(a) 1 and (7)(b) 1 be changed to "The

single maximum day (SMD) in the test year in which there is no unusual occurrence.”

(Tr. 221)

ISSUE 12: Should the calculation of used and useful for storage as proposed in 25-30.4325 (8) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

The Commission adopted a stipulation whereby Rule 25-30.4325 (9) would read: “The used and useful calculations of storage is made by dividing a 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.” (Tr. 16)

ISSUE 13: Should the definitions of usable storage as proposed in 25-30.4325 (9) in Order PSC-07-0469-NOR-WS be adopted as proper definitions for a water treatment used and useful rule?

*The Parties have proposed a stipulation whereby Rule 25-30.4325 (9) would 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. (Tr. 16)*

ISSUE 14: Should the method of determining adjustments to plant and operating expenses as proposed in 25-30.4325 (10) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

Yes. The proposed method of determining adjustments to plant and operating expenses are proper.

Argument. OPC seeks the elimination of subsection (10) of the proposed Rule since it believes it addresses adjustments to “plant operating and maintenance expenses as a result of unaccounted for water.” (Tr. 64) Mr. Woodcock misread this provision which addresses “an adjustment to plant and operating expenses.” Apparently Mr.

Woodcock did not see the “and” as this subsection clearly addresses whether an adjustment to plant for excessive unaccounted for water will be included in a used and used calculation.

Mr. Seidman and Mr. Guastella both consider this subsection to address issues that are appropriate to address in a used and useful analysis. (Tr. 133, 222-223)

ISSUE 15: Should the Commission’s consideration of other relevant factors as proposed in 25-30.4325 (11) in Order PSC-07-0469-NOR-WS be adopted for a water treatment used and useful rule?

Yes. The proposed other relevant factors to be considered are proper.

Argument: As to subsection (11), Mr. Woodcock believes it can be addressed in his proposed alternative calculation provision. (Tr. 64) Thus, if his alternative calculation provision is not adopted, this provision should remain. Mr. Woodcock admitted that it is not unique to see a decrease in flows due to conservation or a reduction in flows. (Tr. 74)

Mr. Guastella noted that these were common considerations, particularly today when conservation efforts are stressed by virtually all agencies. (Tr. 133) Mr. Seidman also testified that these are common factors validly considered by the Commission. (Tr. 222)

There appeared to be concurrence among most of the parties to move subsection (11) to Section (2)³. It is the concept which Utilities, Inc., believes should be preserved whether it is incorporated in subsection (2) or left in subsection (11).

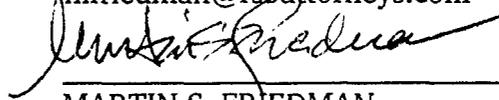
³ While Mr. Redemann testified that he concurred with OPC and industry to move subsection (11) to subsection (2), Mr. Woodcock did not really testify in favor of this, but suggested that the concept was included in his rewrite of Section (3). (Tr. 64)

CONCLUSION

Based upon the testimony and exhibits presented by the parties in this proceeding, the proposed Rule, with the stipulations herein, should be adopted. If any further changes are made, Utilities, Inc., asserts the greater weight of the evidence supports its change as set forth in Issues 6 and 11 hereof.

Respectfully submitted on this 26th day of
February, 2008, by:

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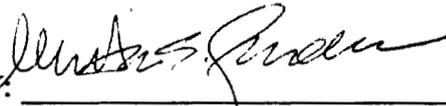
CERTIFICATE OF SERVICE
DOCKET NO.: 070183-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Post Hearing Statement has been furnished by electronic mail & U.S. Mail this 26th day of February, 2008, to:

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