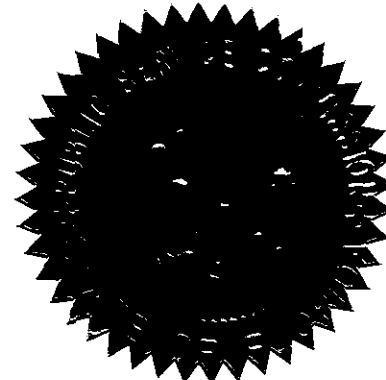


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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: PREHEARING CONFERENCE

BEFORE: COMMISSIONER MATTHEW M. CARTER, II  
PREHEARING OFFICER

DATE: Monday, January 7, 2008

TIME: Commenced at 1:45 p.m.  
Concluded at 2:11 p.m.

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

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

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 00168 JAN-88

FPSC-COMMISSION CLERK

## 1 APPEARANCES:

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4 Florida 32779, appearing on behalf of Utilities Inc. of  
5 Florida.

6 FRANK SEIDMAN, Management & Regulatory Consultants,  
7 Inc., Post Office Box 13427, Tallahassee, Florida 32317-3427,  
8 appearing on behalf of Utilities Inc.

9 KENNETH A. HOFFMAN, ESQUIRE, and MARSHA E. RULE,  
10 ESQUIRE, Rutledge, Ecenia, Purnell & Hoffman, P.A., Post Office  
11 Box 551, Tallahassee, Florida 32302-0551, appearing on behalf  
12 of Aqua Utilities Florida, Inc.

13 KIMBERLY A. JOYCE, ESQUIRE, Aqua Utilities Florida,  
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17 STEPHEN C. REILLY, ESQUIRE, Office of Public Counsel,  
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20 Citizens of the State of Florida.

21 ROSANNE GERVASI, ESQUIRE, and RALPH JAEGER, ESQUIRE,  
22 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,  
23 Tallahassee, Florida 32399-0850, appearing on behalf of the  
24 Commission Staff.

25

## P R O C E E D I N G S

1  
2 COMMISSIONER CARTER: If I could call this hearing to  
3 order. First of all, staff, would you read the notice, please.

4 MS. GERVASI: Pursuant to notice, this time and place  
5 has been set for a prehearing in Docket Number 070183-WS,  
6 proposed adoption of Rule 25-30.4325, Florida Administrative  
7 Code, water treatment plant used and useful calculations.

8 COMMISSIONER CARTER: Thank you. Now we'll take  
9 appearances.

10 MR. FRIEDMAN: Martin Friedman of the law firm of  
11 Rose, Sundstrom & Bentley. We represent Utilities, Inc., one  
12 of the Intervenors. And I've also got Mr. Frank Seidman with  
13 me today, who is the consultant witness for Utilities, Inc. in  
14 this proceeding.

15 COMMISSIONER CARTER: Okay. Mr. Reilly.

16 MR. REILLY: Steve Reilly with the Office of Public  
17 Counsel on behalf of the ratepayers.

18 MR. HOFFMAN: Kenneth Hoffman. With me today is  
19 Marsha Rule. I'd also like to enter an appearance for Kimberly  
20 Joyce, all on behalf of Aqua Utilities Florida, Inc. Aqua is  
21 an intervenor in the proceeding.

22 COMMISSIONER CARTER: Thank you.

23 Staff.

24 MS. GERVASI: Rosanne Gervasi and Ralph Jaeger  
25 appearing on behalf of the Commission.

1           COMMISSIONER CARTER: Okay then. Thank you. We have  
2 taken appearances.

3           Are there any preliminary matters?

4           MS. GERVASI: None that I'm aware of, Commissioner.

5           COMMISSIONER CARTER: Okay. Well, guys, I like to go  
6 through it line by line. If there's no comments or anything  
7 like that, we can just move on. But the way I do it is I take  
8 it from the top and go through that so you can kind of get used  
9 to my style.

10           Okay. Section I is case background. No comments?

11           Section II, conduct of proceedings.

12           Section III, jurisdiction.

13           Section IV, procedure for handling confidential  
14 information.

15           Section V, prefiled testimony and exhibits and  
16 witnesses.

17           Section VI, order of witnesses.

18           MS. GERVASI: Commissioner, in the order of witnesses  
19 section we've indicated that we would put a plus sign for  
20 witnesses that will present direct and rebuttal together and  
21 have since learned that the parties' preference or Public  
22 Counsel's preference is to have his witness come to the stand  
23 for direct and then later for rebuttal. So we can just delete  
24 that sentence, I think.

25           COMMISSIONER CARTER: Okay. All right. We've just

1 gone through Sections I through VI. No comments or questions.

2 Section VII, basic positions.

3 MR. REILLY: I have one comment. I set up there a --  
4 do you have it handy? It's an updated OPC basic position.

5 COMMISSIONER CARTER: Okay.

6 MR. REILLY: And that's in lieu of what's there.

7 COMMISSIONER CARTER: All right. Any other?

8 Mr. Hoffman, you're recognized, sir.

9 MR. HOFFMAN: Thank you, Commissioner Carter. We  
10 would like to reserve the right on AUF's basic position to go  
11 back and supplement that basic position, and I've discussed  
12 this with staff, to the extent that you as Prehearing Officer  
13 wish to accept the Office of Public Counsel's proposed  
14 additional issues or sort of at the end of the issues section.  
15 Those proposed additional issues delineate some separate issues  
16 with respect to high service pumps, and we did not address that  
17 really separately in our basic position. So to the extent you  
18 accept those issues, then we would like to come back and maybe  
19 supplement our basic position. We would try to do that by the  
20 end of the day tomorrow.

21 COMMISSIONER CARTER: Okay. That will be fine. That  
22 will be fine. Okay. Now we'll get to the nitty-gritty.

23 Section VIII, issues and positions.

24 MR. REILLY: I would make just one comment.

25 COMMISSIONER CARTER: Yes, sir.

1 MR. REILLY: Mercifully all the parties apparently  
2 agree on all the -- the wording of the issues, 1 through, what  
3 is it, 7.

4 MS. GERVASI: 1 through 20. But we're on Issue A  
5 right now, the legal issue.

6 MR. REILLY: Oh, I'm sorry. You're right. You're  
7 right. I'm ahead of myself.

8 MS. GERVASI: There was discussion about a potential  
9 settlement or a potential stipulation on Issue A. We didn't  
10 get so far as to reach one, and I don't know whether that has  
11 been updated or not.

12 MR. REILLY: My only comment on that, we feel  
13 comfortable with the research we've done to this point with the  
14 position we've taken. I mean, to the extent that the other  
15 parties agree with our position, we're happy to stipulate to  
16 that and just end the issue.

17 If that is not the case, I still believe it's a  
18 fertile ground for possible stipulation before the hearing  
19 itself, and I just pledge to the Prehearing Officer that I was  
20 going to work on that in the next day or two to see, and  
21 converse with Ken Hoffman and staff and Marty Friedman to see  
22 if we could all -- if you read the positions, they're all  
23 fairly close. But it goes to maybe being a little more clear  
24 about what the, what the burden of proof is as well as who has  
25 the burden of proof and when they have that burden. And to

1 what extent you go into that degree of detail or not is, is our  
2 only concern about stipulating to it at this particular moment.  
3 But it is a potential stipulation, I think.

4 COMMISSIONER CARTER: Okay. And that's Issue 8, the  
5 legal issue.

6 MR. REILLY: Issue 8. Uh-huh. But if we're given  
7 the opportunity in the next day or two or three to see if we  
8 can do that -- I mean, it would keep us from having to brief  
9 it, you know, at the end of the hearing, which is preferable,  
10 if possible.

11 COMMISSIONER CARTER: Mr. Hoffman, you're recognized.

12 MR. HOFFMAN: This is Ken Hoffman on behalf of Aqua.  
13 I think that where we were when we had our pre-prehearing last  
14 week, Commissioner Carter, is that I think that Aqua, and I  
15 don't want to speak for Utilities, Inc., but I believe that  
16 Utilities, Inc., as well as Aqua were agreeable to stipulate to  
17 staff's position on this issue. But I don't think, as  
18 Mr. Reilly said, that the Office of Public Counsel is prepared  
19 at this point to do that. So I think that's kind of where  
20 we're at. And at least on behalf of Aqua we're waiting to see  
21 if the Office of Public Counsel, once they've done their  
22 further research, whether they can agree to the staff position.

23 COMMISSIONER CARTER: Okay. Mr. Friedman, do you  
24 want to be heard on this?

25 MR. FRIEDMAN: No. If you notice, our position is

1 identical to the staff's position.

2 COMMISSIONER CARTER: Okay. Thank you very kindly.

3 Issue 1.

4 MS. GERVASI: Commissioner, this is one of four  
5 issues that we have identified as a potential stipulation. If  
6 the parties agree, we can delete the issue and instead leave it  
7 in as a proposed stipulation as indicated on Page 21 of the  
8 draft order in Section X, proposed stipulations. This would be  
9 proposed stipulation Number 1. I would propose that we delete  
10 the issue and leave it as a proposed stipulation.

11 COMMISSIONER CARTER: Comments?

12 MR. REILLY: We concur.

13 MR. FRIEDMAN: Unopposed.

14 MR. HOFFMAN: We concur.

15 COMMISSIONER CARTER: Okay. Show it done.

16 MS. GERVASI: Thank you.

17 COMMISSIONER CARTER: Issue, Issues, I'll give you,  
18 throw you a curve ball now, Issues 2 through 8.

19 As you know, Issue 2 is definition, so we'll just  
20 take Issues 2 through 8, if that's appropriate. If it's too  
21 confusing, we can take them one by one.

22 Ms. Gervasi, which is your preference?

23 MS. GERVASI: The next stipulation is, or proposed  
24 stipulation is Issue 9. So for Issues 2 through 8, unless any  
25 of the parties have any changes to their language, then we



1 could move on. I believe that perhaps Public Counsel has some  
2 changes.

3 MR. REILLY: And I -- for ease of reference, we just  
4 completed all of our updated positions and that's the second  
5 handout in addition to the updated basic position, if you have  
6 that handy. So that if there is nothing for Issue 2, and I  
7 don't think there is, it's as worded.

8 So we go along with the prehearing order as it is  
9 currently worded except to the extent our supplemental  
10 positions are delineated there, and we're going to furnish  
11 those by e-mail, you know, to staff to just patch it right into  
12 the prehearing order.

13 COMMISSIONER CARTER: Okay. So Issues 2 through 8,  
14 there are no changes, so we'll leave them as they are. Is that  
15 correct?

16 MS. GERVASI: I see that OPC has changes to their  
17 positions on Issues 3, 4, 6, 7 and 8, and we will include those  
18 in the final prehearing order.

19 COMMISSIONER CARTER: Okay. Any other parties want  
20 to be heard before we move forward? Just dealing with Issues  
21 2 through 8. And then Issue 9, I believe, Ms. Gervasi, you  
22 said that's a possibility for stipulation; is that correct?

23 MS. GERVASI: Yes, sir. We've proposed on Page  
24 21 that that be proposed stipulation Number 2 and then deleted  
25 from the issues list.

1 COMMISSIONER CARTER: Okay. And any objections?

2 MR. REILLY: No objections.

3 MR. HOFFMAN: No objection.

4 MR. REILLY: No objection.

5 COMMISSIONER CARTER: Show it done.

6 Issues 10 and 11.

7 MS. GERVASI: I see that Public Counsel has some  
8 wording changes to their positions on both of those issues,  
9 10 and 11, which we will reflect in the prehearing order.

10 COMMISSIONER CARTER: Okay. Okay. Any other  
11 comments on Issues 10 and 11?

12 MR. FRIEDMAN: No.

13 COMMISSIONER CARTER: Okay. Hearing, hearing none,  
14 let's proceed on with Issue 12.

15 MS. GERVASI: Commissioner, Issues 12 and 13 are also  
16 proposed stipulations, Numbers 3 and 4, in which case if the  
17 parties concur, we can delete both of those issues from the  
18 issues list.

19 COMMISSIONER CARTER: And put it in the stipulations  
20 list; right?

21 MS. GERVASI: Yes, sir.

22 COMMISSIONER CARTER: Okay. Excellent. Any, any  
23 corrections by any of the parties?

24 MR. REILLY: We concur.

25 MR. HOFFMAN: We concur.

1 MR. FRIEDMAN: We concur.

2 MR. CARVER: Okay. Show it done. Issue 14.

3 MS. GERVASI: No changes.

4 COMMISSIONER CARTER: No changes. Parties, okay. No  
5 changes? All right.

6 Issue 15.

7 MS. GERVASI: Issue 15, I see that OPC has a change  
8 to their position which we will make note of.

9 COMMISSIONER CARTER: Okay. All right. Now we're on  
10 Issue 16. Issue 16.

11 MS. GERVASI: Commissioner, staff has an addition to  
12 make to our position on Issue 16. We would like to add one  
13 sentence to read, "The cost of high service pumps is minimal  
14 compared to the cost of storage."

15 COMMISSIONER CARTER: Okay.

16 MS. GERVASI: I don't know whether the parties have  
17 changes to make to their positions on this issue.

18 COMMISSIONER CARTER: Did you -- were you able to get  
19 her language?

20 Okay. Now for the parties, are there any corrections  
21 or recommendations or concerns about Issue 16 based upon  
22 staff's wording change?

23 MR. REILLY: No.

24 COMMISSIONER CARTER: Okay. Hearing none --

25 MR. FRIEDMAN: One moment. Yeah. The issue is not

1 as articulated as, as it is in the proposal we made, and I'll  
2 get with the staff. The answer is still, is still no, but we  
3 have a different explanation that we have that did not get  
4 picked up in this one.

5 COMMISSIONER CARTER: Okay.

6 MS. GERVASI: And for clarification, Issues 16  
7 through 20 are the newest issues that were included in the  
8 draft prehearing order just as of last week.

9 COMMISSIONER CARTER: Okay. Issues 16 through 20?

10 MS. GERVASI: Yes, sir.

11 COMMISSIONER CARTER: Okay. So I guess we should  
12 just take them up as a group aside from what, the correction  
13 that you've made from staff on 16; is that correct?

14 MS. GERVASI: I would go issue by issue on these just  
15 in case parties have changes to make to any of the issues.

16 COMMISSIONER CARTER: Okay. We'll do it that way  
17 then.

18 MS. GERVASI: So far I haven't heard that there are  
19 changes to Issue 16, or did I hear that you may be supplying  
20 one at a later date?

21 MR. FRIEDMAN: Well, 16, our answer or position on 16  
22 is the same as it is on the others.

23 MR. SEIDMAN: This is Frank Seidman for Utilities,  
24 Inc.

25 MR. FRIEDMAN: 17, it's 17, 18.

1 MR. SEIDMAN: I don't know if this didn't get picked  
2 up for some reason in what we sent in, but we did have an  
3 explanation beside the "no."

4 MS. GERVASI: Okay.

5 MR. FRIEDMAN: Which is the same as these others.

6 MS. GERVASI: I will make that change.

7 MR. SEIDMAN: Okay. And we'll just provide you with  
8 the language today.

9 COMMISSIONER CARTER: Mr. Hoffman on Issue 16.

10 MR. HOFFMAN: On Issue 16, Commissioner Carter, we,  
11 we have provided staff and the parties with our position on  
12 this issue, so everybody has that. I'll just say right now,  
13 these issues, 16 through 20, were sort of up in the air. It  
14 looks as though they're now going to make their way into the  
15 prehearing order. We did provide staff and the parties with  
16 our positions on these issues, 16 through 19. I notice we have  
17 not yet provided a position on Issue 20 and we need to do that,  
18 and we will get that to staff and the parties, if not today,  
19 certainly by tomorrow.

20 COMMISSIONER CARTER: Okay. That's fine.

21 Mr. Reilly.

22 MR. REILLY: That's fine. And our positions on, on  
23 those issues that are different than stated in the prehearing  
24 order are also on our little handout.

25 COMMISSIONER CARTER: Okay.

1 MR. REILLY: Positions on 17, 18 and 20.

2 COMMISSIONER CARTER: Okay.

3 MR. REILLY: Apparently our position on 19 remained  
4 unchanged.

5 MS. GERVASI: And, Commissioner, staff has a couple  
6 of minor changes to make to our positions on Issues 18 and 20.

7 COMMISSIONER CARTER: Okay. Let's do this -- hold  
8 on. Let's do this. Let's get beyond 16 first.

9 Any more comments from any of the parties or staff on  
10 Issue 16, so we can all be on the same page? Okay.

11 Now Issue 17, Ms. Gervasi, is that what you wanted --

12 MS. GERVASI: Staff does not have a change to  
13 Issue 17 on our position. I've got Aqua's position now on  
14 Issue 17 and also OPC's changed position on Issue 17.

15 COMMISSIONER CARTER: Mr. Hoffman.

16 MR. HOFFMAN: We're good to go with that.

17 COMMISSIONER CARTER: Okay. Anybody else on Issue  
18 17?

19 Okay. Hearing none, Issue 18.

20 MS. GERVASI: Issue 18, staff has a typo in our  
21 position, and we would like to correct that to make reference  
22 to subsection (7) (a) rather than (7) (b) in the position.

23 COMMISSIONER CARTER: Okay. Mr. Friedman, you wanted  
24 to comment on Issue 18?

25 MR. FRIEDMAN: No. We're good.

1 COMMISSIONER CARTER: Mr. Reilly.

2 MR. REILLY: And as stated in our handout, our new  
3 updated position.

4 COMMISSIONER CARTER: Okay. Did I ask you already,  
5 Mr. Hoffman? If I didn't --

6 MR. HOFFMAN: Yes, sir.

7 COMMISSIONER CARTER: Okay. Let's proceed to Issue  
8 19.

9 MS. GERVASI: On Issue 19 I have a change to Aqua's  
10 position, which I will -- that is as reflected in their  
11 handout. Staff does not have a change to our position on  
12 Issue 19.

13 COMMISSIONER CARTER: Okay. Any of the parties want  
14 to be heard on Issue 19? Okay.

15 MR. REILLY: As stated in the prehearing order it's  
16 fine with us.

17 COMMISSIONER CARTER: Good deal. Issue 20.

18 MS. GERVASI: On Issue 20 I have a change for OPC to  
19 their position. And also staff would like to add, to our  
20 position on Issue 20 to add one sentence to the end of our  
21 position to read, "One high service pump is 100 percent used  
22 and useful."

23 COMMISSIONER CARTER: Give me one second here,  
24 please. Okay. Any parties want to be heard on Issue 20?

25 Mr. Reilly, you're recognized.

1 MR. REILLY: She, she covered us. That's our updated  
2 position.

3 COMMISSIONER CARTER: Okay. Mr. Hoffman.

4 MR. HOFFMAN: No, sir. We're going to be providing  
5 our position on Issue 20.

6 COMMISSIONER CARTER: Mr. Friedman, Issue 20.

7 MR. FRIEDMAN: Ours is as articulated in the proposed  
8 prehearing order.

9 COMMISSIONER CARTER: Okay. We're making progress.

10 Now let's look at Section IX, which is the exhibit  
11 list. Does any party have any changes to this section, this  
12 section on the exhibit list?

13 Okay. Hearing none, Section X, proposed  
14 stipulations.

15 MR. REILLY: I guess I would add one thing on  
16 exhibits.

17 COMMISSIONER CARTER: Hang on one second. You're  
18 back on, on --

19 MR. REILLY: On exhibit list, IX.

20 COMMISSIONER CARTER: Exhibit list. Yes, sir.

21 MR. REILLY: My only thought -- we were struggling  
22 with all of our updated positions, and our positions have  
23 evolved a little bit in rebuttal. Consequently, there have  
24 been a number of changes to our Exhibit ATW-2, so I would like  
25 to be able to offer just an updated, cleaned up version of our



1 final recommendation as a result of these little changes that  
2 have taken place. I think it will be a more useful document  
3 than this one here, with no objections. That way we'd have a  
4 final document that people can critique basically.

5 COMMISSIONER CARTER: Okay. Mr. Hoffman.

6 MR. HOFFMAN: I would like the opportunity to review  
7 that document before agreeing to allow it in. But to the  
8 extent that all that document would do would be for  
9 Mr. Woodcock to take his initial Exhibit 2, which was part of  
10 his direct testimony, and then amend his proposal to  
11 incorporate stipulations, then it is likely that I would not  
12 have any objection to that. But I'd like to see it first.

13 COMMISSIONER CARTER: Okay. Mr. Friedman.

14 MR. FRIEDMAN: I concur with what Mr. Hoffman said.

15 MR. REILLY: It's basically to make that model rule,  
16 our version of the rule conformed not only to the stipulations,  
17 but also to our slightly changed positions that are found in  
18 the prehearing order. I mean, there are some positions in here  
19 that are a little bit refined.

20 MR. HOFFMAN: And that I may have a problem with to  
21 the extent, Commissioner, that the original proposal that  
22 Mr. Woodcock, who is Public Counsel's witness, attached to his  
23 testimony was the subject of our rebuttal testimony. So now  
24 if, if Mr. Reilly does what he suggests, we're going to be left  
25 in a position where he's permitted to put something in after we

1 have filed our rebuttal testimony and we wouldn't have an  
2 opportunity to file prefiled testimony addressing that. So I  
3 would say initially we're going to object to them changing  
4 their testimony to update it for whatever reason other than to  
5 incorporate a stipulation into their, into the Public Counsel's  
6 proposed rule.

7 MR. REILLY: In fact, I'd have to study it because  
8 there was a number of little changes. Most of the changes were  
9 reflecting movement of Public Counsel either toward staff or  
10 even toward some of the utility positions, if I'm not mistaken.  
11 But I'd be happy to produce this document in a very short time  
12 period and have them look at it. And to the extent that  
13 there's, he feels that there's something in there that he's not  
14 had a chance to critique in his rebuttal, in his, in his either  
15 direct testimony -- he's got surrebuttal testimony coming in.  
16 I mean, I guess that could be an opportunity to, to -- but I  
17 think he's going to find that the few little changes are  
18 actually not something that he's going to be adverse to. So, I  
19 mean, that's my recollection of where we're at. Until I fully  
20 go through it in detail, I'm not, I'm not positive, but --

21 MR. HOFFMAN: I think that this all might be a little  
22 bit premature at this point, Commissioner.

23 MR. FRIEDMAN: Are you proposing that as a rebuttal  
24 exhibit?

25 MR. REILLY: No. No. I'm basically just, basically

1 just like this, like an updated model rule based on what we,  
2 where we are with the case right now.

3 I'd be happy to try to get this produced in 24 hours  
4 just to have all the parties look at it and then, you know, at  
5 that point determine if they feel, you know, that there's some,  
6 been some movement on Public Counsel's part that's not  
7 appropriate with their, you know, direct case. I mean, I feel  
8 pretty comfortable that that won't be a problem. And then  
9 that's something we could take up at the beginning of the  
10 hearing, you know. But I think it would be a useful document.  
11 And that document -- as useful as that model rule was, you  
12 know, attached to the direct testimony, it is, it is in some  
13 small ways changed and it's become a little dated. So I  
14 thought it would be helpful to have the latest and greatest,  
15 you know, of what we thought would be the best possible outcome  
16 out of this proceeding.

17 MR. FRIEDMAN: Okay.

18 MR. HOFFMAN: Again, I'm always reluctant to  
19 stipulate up-front to what, to what sounds like an expansion of  
20 the prefiled direct testimony after my witness filed his  
21 rebuttal testimony. Having said that, I welcome the  
22 opportunity to review a proposed new exhibit that Mr. Reilly  
23 may wish to put together. And I think what we're talking about  
24 is the potential for a stipulation as to whether or not all  
25 parties could agree to put that in. We may have an objection

1 to doing so.

2 MR. REILLY: And that's fine, if we could defer their  
3 potential objections until after I produce the document  
4 basically in effect.

5 But I don't really have to do it. I'm just doing it  
6 frankly as an aid to the Commissioners and to staff and to the  
7 parties. We feel comfortable, you know, going on with this  
8 somewhat stale model proposal in our testimony where it stands  
9 right now.

10 MR. FRIEDMAN: Well, I think that's what we ought to  
11 do then.

12 MR. HOFFMAN: If he's comfortable doing that --

13 MR. REILLY: No, I'm saying --

14 (Simultaneous conversation.)

15 COMMISSIONER CARTER: Wait. Wait. Wait. Wait. We  
16 can all sing together, but talking brings about a little noise.  
17 Let Mr. Friedman finish, then we'll come back to Mr. Hoffman  
18 and then we'll come back to you, Mr. Reilly.

19 MR. FRIEDMAN: Commissioner Carter, Mr. Reilly just  
20 said he was comfortable doing it the way we have it, the way  
21 we're doing it, and it's certainly the more traditional way to  
22 do it. And I'd suggest if he's comfortable with it, let's roll  
23 with it the way we have it.

24 MR. REILLY: May I define my term "comfortable"? I  
25 think we can make our case, you know, and brief it and be in

1 good shape without the updated model rule, but I just think it  
2 is a tool that will be very helpful at the hearing to say what  
3 does Public Counsel say on this issue? Well, then you have  
4 this one document that says that. That's why I'm going to  
5 endeavor to try to produce this document.

6 After I produce it, if people have an objection for  
7 some reason, then I'd like to respond to that objection, you  
8 know. And then you can make a ruling as to whether you think  
9 it's appropriate to be made part of the record or not at that  
10 time.

11 COMMISSIONER CARTER: Mr. Hoffman.

12 MR. HOFFMAN: Well, again, if he's comfortable with  
13 it, I'm comfortable with just sort of staying with the  
14 procedures that we've always used. If he wants to present  
15 basically a revised exhibit, I think that's unusual. I think  
16 he probably needs to file some sort of motion to put that in  
17 unless we can reach some agreement on it.

18 And, again, I was fine if all he was doing was taking  
19 what he had done before, what his witness had done before on  
20 sort of the Public Counsel proposal and incorporating  
21 stipulated issues. But it sounds like he's talking about doing  
22 other things like changing that exhibit to somehow conform to  
23 new positions. And I remain concerned that that would deprive  
24 us of the opportunity we would have had to file prefiled  
25 rebuttal testimony addressing that. So we'll just wait and see

1 what he does.

2 COMMISSIONER CARTER: Okay. Staff?

3 MS. GERVASI: We don't have an objection, an  
4 objection to reviewing the revised exhibit and seeing from  
5 there whether or not parties object to it.

6 COMMISSIONER CARTER: Okay. We'll just, we'll look  
7 at it and go from there.

8 MR. REILLY: And, in fact, I'm going to do it just as  
9 he suggests basically. I'll prepare a little motion to file  
10 this updated model rule on the part of the Public Counsel and  
11 say the reasons why we've done it and where we're doing it and  
12 let the parties take their -- respond to that motion. That's  
13 fine.

14 COMMISSIONER CARTER: Okay. I guess then did we beat  
15 the dead horse to sleep on that one or do we need to do some  
16 more?

17 MR. REILLY: I think so.

18 COMMISSIONER CARTER: Okay.

19 MS. GERVASI: I don't know whether we've talked about  
20 how soon that motion will come in. Or did you say within 24  
21 hours?

22 MR. REILLY: I didn't say how soon, but --

23 MS. GERVASI: I heard something about 24 hours.

24 MR. REILLY: Well --

25 COMMISSIONER CARTER: That's what he said.

1 MR. REILLY: Now that it's turned into a motion, it's  
2 getting a little more involved. Towards the end of the week.  
3 I was just going to produce the document. Now it's going to be  
4 a little more involved. Today is Monday, so -- what will work  
5 for you?

6 MS. GERVASI: I'm thinking about the surrebuttal  
7 testimony due date is on the 10th. It would be helpful if it  
8 could be filed before that.

9 MR. REILLY: Oh, well, 48 hours basically, a motion,  
10 if we do it at all. If we do it, we'll file a motion and an  
11 updated Public Counsel rule.

12 MS. GERVASI: By the end of the day?

13 MR. REILLY: By the end of the day on Wednesday, the  
14 end of Wednesday.

15 MS. GERVASI: Thank you.

16 COMMISSIONER CARTER: Okay. Section X, proposed  
17 stipulations. I think we talked about a few up-front. But are  
18 there any other changes to this that, other than what we've  
19 already discussed?

20 MS. GERVASI: I'm not aware of any, Commissioner.

21 COMMISSIONER CARTER: Okay. Any of the parties aware  
22 of any? You guys? Okay.

23 Okay. Then Section XI, pending motions. Staff.

24 MS. GERVASI: We have one pending motion as reflected  
25 in the draft prehearing order, which is Aqua's motion for leave

1 to file surrebuttal testimony. Commissioner, you've issued an  
2 oral ruling granting that, so in Section XIV we will reflect  
3 your ruling on that motion.

4 COMMISSIONER CARTER: Okay.

5 MS. GERVASI: I don't -- that is the only pending  
6 motion.

7 COMMISSIONER CARTER: Okay. Now that would put us --

8 MS. GERVASI: In Section XII.

9 MR. REILLY: I had, I had only just a small question  
10 on that oral motion. It's my understanding that, that they  
11 will have an opportunity to file surrebuttal testimony to the  
12 extent that our rebuttal testimony refuted or rebutted their  
13 positive suggestions for changes to the rule. Is that, is that  
14 the correct -- because I've not seen the oral -- you know, I  
15 haven't seen anything.

16 MS. GERVASI: That's what was requested in the motion  
17 and that's what was granted.

18 MR. REILLY: That's what was granted. Okay. Thank  
19 you.

20 COMMISSIONER CARTER: All right. Let's see here. I  
21 assume there are no pending confidential matters.

22 MS. GERVASI: That's correct, Commissioner.

23 COMMISSIONER CARTER: Is that a safe assumption to  
24 make?

25 MS. GERVASI: Yes, sir.



1 COMMISSIONER CARTER: Okay. Section XIII,  
2 posthearing procedures.

3 MS. GERVASI: No changes.

4 COMMISSIONER CARTER: Okay. Rulings, Section XIV.

5 MS. GERVASI: In addition to the motion to file  
6 surrebuttal testimony which will be reflected in this section,  
7 staff is recommending that opening statements, if any, not  
8 exceed ten minutes per party.

9 COMMISSIONER CARTER: Okay. Okay. Are there any  
10 other matters? Mr. Friedman?

11 MR. FRIEDMAN: None from Utilities, Inc.

12 COMMISSIONER CARTER: None? Mr. Reilly.

13 MR. REILLY: None from Public Counsel.

14 COMMISSIONER CARTER: Mr. Hoffman.

15 MR. HOFFMAN: None from Aqua.

16 COMMISSIONER CARTER: Staff.

17 MS. GERVASI: None from staff.

18 COMMISSIONER CARTER: I was just getting going here,  
19 you guys.

20 Okay. Hearing none, the hearing is now adjourned.

21 (Prehearing Conference adjourned at 2:11 p.m.)

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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 8<sup>th</sup> day of January, 2008.

Linda Boles  
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FPSC Official Commission Reporter  
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