

**Marguerite Lockard**

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**From:** DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]  
**Sent:** Friday, June 29, 2007 4:21 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** REILLY.STEVE; John Guestella; Martin S. Freidman; Ralph Jeager  
**Subject:** 070183-WS Filing  
**Attachments:** Petition for Hearing.doc

Electronic Filing

a. Person responsible for this electronic filing:

Stephen C. Reilly, Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
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b. Docket No. 070183-WS

In re: Proposed adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 5pages.

e. The document attached for electronic filing is Citizen's Petition for Hearing

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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.

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DOCKET NO. 070183-WS

FILED: June 29, 2007

**CITIZENS' PETITION FOR HEARING**

Pursuant to Chapter 350.0611, 120.54, 120.569 and 120.57 (1), Florida Statutes, ("F.S.") and Rules 28-103.005 and 28-106.201, Florida Administrative Code, ("F.A.C.") the Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, file their request for the Commission to conduct a formal evidentiary hearing concerning the proposed adoption of Rule 25-30.4325, F.A.C. In support of this petition the Citizens state:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Docket No. 070183-WS

2. The Citizens include all of the customers of privately owned water companies regulated by the Florida Public Service Commission ("Commission") whose substantial interests will be affected by the Commission's proposed Rule 25-30.4325, F.A.C., because the proposed rule will establish uniform standards for the calculation of the used and useful percentages for water treatment and storage facilities for all water companies regulated by the Commission. These standards will determine what portions of the companies' water treatment and storage plant in service will be included in rate base and recoverable in rates and charges imposed upon current and future customers of water utilities regulated by the Commission. The resolution of these standards will have a material effect on determining the revenue requirements

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FPSC-COMMISSION CLERK

and resulting rates and charges to be imposed upon ratepayers in future water rate case proceedings.

3. Pursuant to Chapter 350.0611, F.S., the Citizens who file this petition are represented by the Office of Public Counsel (“Citizens,” “Petitioner” or “OPC”) with the following address and telephone number: Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, Telephone No. (850) 488-9330.
4. The Citizens received a copy of the Commission’s Notice of Proposed Adoption of Rule 25-30.4325, F.A.C., by inter-office courier on June 1, 2007.
5. The ultimate facts alleged, including the specific facts the Petitioner contends warrants revision of the proposed rule, are that many of the provisions of proposed Rule 25-30.4325, F.A.C., do not properly establish or properly apportion between current and future customers, the costs of providing water service. The specific portions of the rule that fail to properly establish or properly apportion between current and future customers, the costs of providing water service include the following:
  - a. The terms defined in the rule; and
  - b. Requirement to consider economies of scale without establishing the proper prerequisites or documentation; and
  - c. Unbridled opportunity given to utilities to disregard provisions of the rule by allowing utilities to offer alternative calculations when utilities deem it appropriate to do so; and
  - d. Improper determination of systems to be 100% used and useful under certain circumstances; and
  - e. Improper determination of firm reliable capacity; and
  - f. Improper determination of peak demands; and

- g. Failure to separately consider the used and useful percentage for high service pumping; and
  - h. Improper disallowance for adjustments to plant and operating expenses for excessive unaccounted for water under certain circumstances.
- 6. Chapter 120.54, (3) (c) 2., 120.569, 120.57 (1), 367.081, F.S., are the Florida Statutes that Petitioner contends require modification of the Commission's proposed Rule 25-30.4325, F.A.C.
- 7. The Commission conducting a public hearing on the proposed rule, pursuant to Chapter 120.54 (3) (c) 1., F.S., will not adequately protect the interests of the Citizens of the State of Florida. Establishing proper standards for the calculation of the used and useful percentages of water treatment, storage and high service pumping plant in service involves complex engineering issues. The substantial interests of the Citizens require that these complex issues be presented and resolved in a formal Chapter 120.57 (1), F.S., evidentiary hearing, where the experts for the utilities and the customers can present their sworn testimony, which is subjected to cross-examination and post-hearing briefs of the parties. The Commission should not finalize its rule concerning this important subject until after it has conducted such a formal evidentiary hearing.
- 8. Pursuant to Chapter 120.54, (3) (c) 2., F. S., the Petitioner requests the Commission to suspend the rulemaking proceeding and convene a separate proceeding under the provisions of Chapter 120.569 and 120.57 (1), F. S., to consider the sworn testimony of experts sponsored by the customers and the utilities prior to finalizing the language of proposed Rule 25-30.4325, F.A.C. Upon the conclusion of this separate formal evidentiary hearing, the rulemaking proceeding can be resumed and the Commission can proceed to notice its intent to adopt Rule 25-30.4325, F.A.C.

WHEREFORE, the Citizens hereby request the Commission to suspend the above rulemaking proceeding and conduct a Chapter 120.57 (1), F.S., hearing on the proposed rule. Only after the conclusion of the formal evidentiary hearing should the Commission resume its rulemaking proceeding and issue its notice of intent to adopt a rule consistent with its findings in the formal evidentiary hearing.

Respectfully submitted,

s/Stephen C. Reilly  
Stephen C. Reilly  
Associate Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

Attorney for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 070183-WS**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' Petition for Hearing has been furnished by electronic mail and U.S. Mail to the following parties on this 29<sup>th</sup> day of June, 2007, to the following:

Ralph Jaeger, Esquire  
Florida Public Service Commission  
Division of Legal Services  
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s/Stephen C. Reilly  
Stephen C. Reilly  
Associate Public Counsel