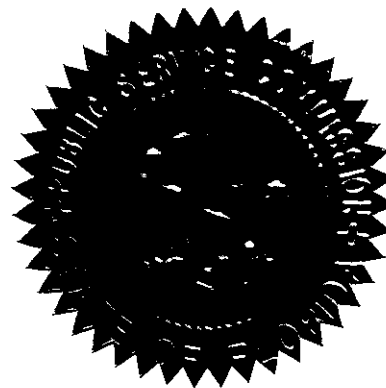


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

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

DATE: Tuesday, April 8, 2008

PLACE: Betty Easley Conference Center
Room 148
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Tallahassee, Florida

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FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

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3 ROSANNE GERVASI, ESQUIRE, PATTI DANIEL, STAN RIEGER,
4 and MARSHALL WILLIS, appearing on behalf of the Florida Public
5 Service Commission Staff.

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P R O C E E D I N G S

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2 **CHAIRMAN CARTER:** Let's back up to Item 3. Staff,
3 let's get ready for the item.

4 **MS. GERVASI:** Thank you.

5 This is Rosanne Gervasi with the Commission legal
6 staff. Item 3 is staff's post-hearing recommendation to adopt
7 Proposed Rule 25-30.4325, Water Treatment Plant Used and Useful
8 Calculations, with certain changes based on the evidence of
9 record and as set forth on Attachment C to the recommendation.

10 I would note that if the Commission agrees with staff
11 on Issue 2, then Issues 16 through 20 of the recommendation are
12 moot and need not be ruled upon, because those issues address
13 proposed changes to the definition of storage facilities as set
14 forth in Issue 2.

15 **CHAIRMAN CARTER:** Thank you.

16 And, Commissioners, this item, Item 3 is limited to
17 Commissioners and staff. So, at this point in time,
18 Commissioners, we'll go into our question phase, and then we
19 will go into discussion and then debate. We are in our
20 question phase on Item 3.

21 Commissioners, any questions?

22 Commissioner Argenziano, you're recognized.

23 **COMMISSIONER ARGENZIANO:** Thank you. The question I
24 have, I guess, for staff is have they done any calculations
25 regarding the 18-hour calculation? I know OPC wanted 24, and

1 at the last time -- I think the last time we spoke on this I
2 had heartburn about the 12 hour, and particularly wanted to
3 know about how that pans out if we went to somewhere in
4 between. And also if there were -- and I'm not sure if you can
5 answer this, if there were -- I remember the water management
6 district gentleman testifying, but it was very -- I don't know
7 what the term would be -- Milquetoast. I'm not sure. I
8 couldn't really derive an answer from him whether there were
9 environmental impacts of 24-hour pumping.

10 **MR. RIEGER:** Right. This is Stan Rieger with
11 Commission staff, and your question about the 18-hour thing,
12 no, there has not been particular identification of what the
13 18-hour thing would do. But it is a consideration that is
14 possible, but we have no information. In fact, we have little
15 information based on past Commission decisions.

16 Typically when we come up with this type of criteria,
17 we normally have gone in the past using the 12-hour route, and
18 that appeared to be fair overall to allow the customers to have
19 adequate service and for the utilities to have adequate rate of
20 return on their investment.

21 As far as the water management district is concerned,
22 basically that testimony referred in generalities, which our
23 witness was unable to determine the benefits pros or cons,
24 either way, and you could find the 24, or you could make an
25 argument on the 12. There was actually a discussion of the 12

1 and overall that this related to me as a response as to it's
2 hard to put your finger on such a thing.

3 And I think at the end of the day, he didn't really
4 have trouble with the 12, and he said that in some cases it
5 could eliminate possible problems with the groundwater using a
6 lesser amount of pumping time. So that's what we know now.

7 **COMMISSIONER ARGENZIANO:** Mr. Chairman, if I may.

8 **CHAIRMAN CARTER:** You're recognized.

9 **COMMISSIONER ARGENZIANO:** Well, I guess you
10 determined the 12 hour to be fair, but OPC doesn't see it that
11 way. And trying to get a little bit closer to where they want
12 to be as far as determining the best use and you have a pump
13 that's only working 12 hours a day. Can you help me -- I want
14 to see if you have a clear definition of what OPC is really
15 trying to do in the 24-hour pumping rather than the 12.

16 **MR. RIEGER:** As far as a clear definition, we know
17 that OPC wants to start with a 24-hour day because there are
18 naturally 24 hours in a normal day, but --

19 **COMMISSIONER ARGENZIANO:** And just a reason of what
20 you think their reasoning is behind it? I'm sorry, Mr.
21 Chairman.

22 **MR. RIEGER:** Well, it would lean more towards the
23 rates, as far as the impact on the rates. That's obvious. But
24 what it doesn't adhere to is to the actual needs of the
25 customers during the peak usage hours. So actually to answer

1 your question, we have more reasons not to go for the 24-hour
2 thing because it does not reflect what is actually out there.
3 There are various reasons other than, of course, the obvious
4 ones about the usage patterns as we already spoke about and the
5 salvage of the quality of the groundwater.

6 We also know that these facilities with these
7 storage, which there are not that many of them, most of our
8 systems out there, particularly our smaller ones, do not have
9 storage. Those that do have storage primarily for the reason
10 to accommodate treatment, such as aeration, and filtration, and
11 those type of items. Plus, we also know that the construction
12 of these facilities, a lot of them may not have 24 hours worth
13 of pumping capacity of storage. They are built much smaller
14 than that, and so there is really no way to put the 24 hours
15 worth of flow to accommodate that.

16 **COMMISSIONER ARGENZIANO:** Right. But in that
17 instance wouldn't it be that, of course, if you don't have the
18 storage then you just couldn't possibly do 24 hours.

19 **MR. RIEGER:** That's correct.

20 **COMMISSIONER ARGENZIANO:** I think it would be only in
21 the instance that if you did have the storage that the
22 possibility could even come to 24 hours or 18 hours.

23 **MR. RIEGER:** That's right.

24 **COMMISSIONER ARGENZIANO:** So it wouldn't be that it
25 would apply to everybody, it would only apply to a very small

1 amount of those facilities that have that capacity.

2 **MR. RIEGER:** Yes. And we also know that the
3 impact -- staff is concerned that at the end the day do the
4 customers have the water during the times that they need it the
5 most, those peak hours. Those peak 12 hours. We are concerned
6 that if the utilities do not earn a fair rate of return on
7 their investment it might affect design criteria when they
8 think about building.

9 They could build smaller units, and then you have
10 that step increase of as time goes on they will build another
11 unit at a higher cost, and then you have problems with the
12 customers paying the impact of the newer facilities at
13 inflation cost. So it's better to build bigger initially to
14 have that volume there rather than to step increase and have
15 the footprint of the plant larger, and that was brought up at
16 the hearing, with multiple smaller tanks than to have one
17 larger tank to cover all of this at a smaller price.

18 **COMMISSIONER ARGENZIANO:** But then, again, we are
19 only talking about a small amount of facilities that would be
20 subject to a longer hour day of pumping.

21 **MR. RIEGER:** Right.

22 **COMMISSIONER ARGENZIANO:** And I guess my concern is,
23 and I understand what you're saying, the rate of return in
24 building up front a larger facility is probably a lot smarter
25 to do. My concern is, of course, the rate impact on the

1 consumer. And OPC, you know, I guess that's their concern,
2 also.

3 **MR. RIEGER:** Right.

4 **COMMISSIONER ARGENZIANO:** And then I'm just having a
5 hard time understanding where the 12 hour really -- you know,
6 why not a 16 hour?

7 **MR. RIEGER:** 12 hour is not a golden number, that is
8 true. It is not a live or die number. The meter is 24. There
9 was little or no testimony during the hearing that brought out
10 any other offering of a different hour to that case.

11 **COMMISSIONER ARGENZIANO:** Well, I think there was. I
12 think I asked about it. But I understand, I'm really trying to
13 balance it all. I just think -- and, Commissioner, just my
14 feeling about it is that I don't know that 12 hour is the magic
15 number. And because it applies to so few facilities, perhaps
16 bumping it up has less of an impact on the ratepayer. Although
17 I don't want to really get into the rate of return for the
18 company, also.

19 **MR. RIEGER:** Yes. It is a familiar number. It's a
20 number that has been, in my view, tested over the years.

21 **COMMISSIONER ARGENZIANO:** Maybe it wasn't tested, it
22 just remained.

23 **MR. RIEGER:** But over the years it seems to be a
24 familiar workable number for staff and for the Commission to
25 use.

1 **COMMISSIONER ARGENZIANO:** Thank you.

2 **CHAIRMAN CARTER:** Commissioners?

3 Commissioner Edgar, you're recognized for a question.

4 **COMMISSIONER EDGAR:** Thank you, Chairman Carter.

5 Could I ask our staff to respond in a little more detail on the
6 point that Commissioner Argenziano raised about potential
7 impacts to ratepayers with the 12 hour versus the 24 hour,
8 recognizing that we are, I think, talking about just a few
9 systems probably. But if you could speak to that point more
10 specifically.

11 **MR. RIEGER:** Basically, what we have seen in the past
12 is that the customers desire flow, desire water when it's time
13 for them to have it, and during those peak waking hours that
14 was discussed so much. There is also concern that the
15 facilities, about the storage facilities and their capacity to
16 generate the volume when it's needed. The impact as far as
17 what I said earlier is the idea of perhaps smaller is better in
18 a step thing, we don't believe that is because of the economies
19 of scale to construct such facilities, and inflation costs and,
20 just -- due to inflation, you know, everything is more
21 expensive now if you have to repurchase something new rather
22 than have an existing structure there to accommodate the needs
23 of the customer base.

24 We believe in the long run the customers do benefit
25 from having these type of facilities at the stage of what has

1 been determined in the past, and it's a good design criteria.
2 And overall, we know that since most of our systems have
3 started off basically as a developer related system and over
4 time actual utilities have taken over, we know that developers
5 do not overbuild. They build just enough to supply what they
6 think are the immediate needs of a customer base at a
7 reasonable capacity. And we are finding that with most of our
8 systems.

9 Most of our systems are older now. We have very few
10 new systems coming on-line. We know from experience that as
11 rate cases come and go and staff goes out there and reviews
12 these facilities, we know physically what we see out there is
13 for more the most part the minimum size necessary to serve the
14 customer base. I can't think of anything else right now at
15 this time.

16 **CHAIRMAN CARTER:** Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** Just another question,
18 because I have no idea what their rate of return is, and I
19 don't know if it is reasonable, or just, or what it would be if
20 it was bumped up to 18 hours. So I don't know -- without
21 having that information, I have to look at it and say, okay,
22 without severely impacting the rate of return, which I'm not
23 sure what percent it is or if it's reasonable or not, how bad
24 would it be for the company if you could get lower rates.
25 Because everywhere I look, especially with those older systems

1 out there, rates are just going up and up and up. And I'm more
2 concerned at this point -- not more concerned, equally
3 concerned with the rate of return, but having a big question
4 mark of what that I was. And just because it has been accepted
5 for how many years doesn't mean that I have any idea of what it
6 is.

7 So my concern now is when OPC brings up a point that
8 this could -- if you do it a different way, if you calculate it
9 a different way you could start bringing rates down maybe and
10 it wouldn't be such an impact, because that's all I hear from
11 people out there is we can't even afford the water to drink.
12 And I know the company has to provide it and make a profit,
13 too, but having missing that information, all I can think of
14 is, well, then I have to move towards the possibility that
15 maybe we can reduce the rates by maybe moving to somewhere in
16 the middle, an 18-hour day.

17 **CHAIRMAN CARTER:** Staff, you're recognized.

18 **MS. DANIEL:** Commissioners, Patti Daniel on behalf of
19 staff. Just to address, from a ratemaking standpoint, a little
20 more than Stan is giving you with the engineering standpoint,
21 what this rule will address is not the rate of return
22 percentage, it will address the amount of dollars that will be
23 included in rate base. Is it going to be 100 percent of the
24 cost of these pumps, or is it going to be something less than
25 100 percent? And that is what the 12 versus 24 hours gives

1 you. It is that fractional adjustment as to whether all of the
2 rate base will be included for purposes of setting rates.

3 **COMMISSIONER ARGENZIANO:** Mr. Chair, I understand
4 that. But he brought up rate of return, and I thought if that
5 is being considered in this 12 hour -- well, it must be, but my
6 point is that if you have got 100 percent return, then maybe
7 you should be getting 100 percent of what your pumps could be
8 giving. And I think that's OPC's concern. So I'm trying to
9 meet somewhere in the middle.

10 I would think that maybe we can look at moving to an
11 18-hour or 16-hour day to try to relieve some of the burden
12 that's on the consumer whose bills are ever increasing.
13 Because if you have got a pump that can pump 24 hours and you
14 calculate it that way, boy, it comes down to a little bit less
15 impact. So let's then go to 100 percent of that pump can do.

16 **MS. DANIEL:** It is a judgment call. Bear in mind
17 that this what we call a default rule, something that will work
18 the majority of the time. Whatever you choose, 12, 24, or
19 anything in between, that would be the default, and any party
20 would have the opportunity to offer an alternative.

21 **COMMISSIONER ARGENZIANO:** Mr. Chair.

22 **CHAIRMAN CARTER:** You're recognized.

23 **COMMISSIONER ARGENZIANO:** I understand that people do
24 things a certain way and don't like shaking the trees, but
25 sometimes you have to shake the tree to figure out what's going

1 on. And I'm not new here anymore, but I'm kind of new, and
2 what I'm trying to figure out is the missing components that I
3 can't see, okay? And that's what I'm trying to express. Just
4 because maybe it is the way we have done something for how many
5 years, it may be time to change it, I don't know, but I'm
6 trying to derive that information. So, I'm not trying to get
7 on anybody's case, but as a Commissioner I'm here, I'm going to
8 try to get as much information as I can, and if I can't, then
9 the only way I can come down is, hey, what I have got available
10 to me says that this may reduce rates for our consumers and
11 that's probably the way I'm going to go.

12 **MS. DANIEL:** There was one other little piece of
13 information that was compelling to me, and still it's just a
14 judgment call, I mean, you're going to have to pick a number
15 and there will be adjustments to the rule, or alternatives to
16 the rule. The engineers have described to me, that is they go
17 and look at these systems, they just generally don't see those
18 systems pumping 24 hours. They see those systems pumping
19 something less than 24 hours. So, again, that kind of leads
20 you, you know, is 12 hours the right number or something in
21 between.

22 **COMMISSIONER ARGENZIANO:** Okay. But, now to that
23 point, if I may, before we lose track of it, the engineers I
24 have spoken to -- and now if you have a delapidated system,
25 well, it's probably not one that has a major storage facility

1 anyway, so you can't even apply more than the capacity can
2 have. So the ones that we are talking about, let's go back to
3 that, are very few that would have storage and would have that
4 capacity. And engineers tell me that it's actually worse on
5 the pumps to turn them on and off.

6 **MS. DANIEL:** I did see that in the testimony. That
7 having been said, I prefer Mr. Rieger to speak to that, he's
8 the engineer, but my understanding was his observations in the
9 field --

10 **COMMISSIONER ARGENZIANO:** You understand my dilemma.

11 **MS. DANIEL:** I do.

12 **COMMISSIONER ARGENZIANO:** I'm hearing one thing and I
13 find out another and it's like, okay, now I have to come to the
14 conclusion.

15 **MS. DANIEL:** Well, I think what you are seeing is
16 there are --

17 **COMMISSIONER ARGENZIANO:** Variables.

18 **MS. DANIEL:** -- a lot of different types of
19 facilities in Florida, and we're just trying to come up with a
20 rule that will address the majority of them. And I'm sure
21 there are going to be times you are going to see 24 hours of
22 pumping, and there will be other times you will see something
23 else. So you have just got to pick one. But, you know, if
24 Stan can address --

25 **MR. RIEGER:** Basically, these pumps, the turning on

1 and off scenario, in essence that does not really exist out
2 there. These pumps are pumping against pressure or they are
3 pumping into a facility such as a hydro tank or whatever, they
4 will run for many minutes to fill up or to equalize the
5 pressure on the system. We don't have that situation out
6 there. If it does, the quick turning on off, that does
7 indicate that there is a problem. Either a hydromatic tank is
8 waterlogged or there is something -- float switches are
9 malfunctioning or something like that. That is an indication
10 that there is a technical problem that needs to be addressed.
11 It doesn't really apply in the scenario that we're speaking of.

12 **COMMISSIONER ARGENZIANO:** I don't think you
13 understood my point. I don't think I was going to what you
14 just addressed. I think what I was saying is that I have told
15 not only through the testimony, but other engineers I have
16 spoken to tell me that a lot of times with the pumps -- rather
17 than having them turn on and off, that they actually have a
18 longer life probably by keeping them running.

19 **MR. RIEGER:** Yes, that is true.

20 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

21 **CHAIRMAN CARTER:** Mr. Willis, did you want to
22 comment?

23 **MR. WILLIS:** I would like to add to that response.
24 Commissioner, you're exactly right. If you went to
25 an 18 month or an 18-hour time frame, it would have some effect

1 on lowering rates. But my only concern there is something that
2 Mr. Rieger said a minute ago, which I have been aware of for
3 many, many years working here, is that the industry does listen
4 to the Commission when they act, and if the Commission did go
5 to an 18 month or something different other than 12 month --

6 **CHAIRMAN CARTER:** Twelve hour.

7 **MR. WILLIS:** I'm sorry, 12 hours -- it might have an
8 effect upon what the industry does in the future as far as
9 construction. They --

10 **COMMISSIONER ARGENZIANO:** I'm sorry, I don't mean to
11 cut you off. And I understand that, but I have to look at what
12 is at me today. And I don't want to cripple an industry by any
13 means. But sometimes, you know, if you just -- I have to
14 scratch my head to that, because I'm just not sure that that is
15 the right way to do things. Well, in the future we may not do
16 it this way. Well, in the future maybe you design it a little
17 different and maybe in the future some of these systems that
18 are going to be off line before you know it because they are
19 old will be designed with better storage and be done a whole
20 different way. So there is always two ways of looking at it.

21 I'm not trying to put limits on the industry, and I
22 understand your concern, we need them to be building systems,
23 but I have a feeling they are going to be built a different way
24 in the future.

25 **CHAIRMAN CARTER:** Mr. Willis, and then I am going to

1 go to Commissioner McMurrian. And if any of the other
2 Commissioners have any further questions, because we are in our
3 questioning phase.

4 Mr. Willis, I think you were in the middle of a
5 point. Did you complete that thought that you were --

6 **MR. WILLIS:** I was going to add to it a little bit.
7 The only point I was trying to make is the industry does depend
8 on Commission decisions in their decisions on how to construct.
9 Mr. Rieger made a point a minute ago that the industry may
10 construct smaller units. It's very possible they could
11 construct smaller wells, which would mean they would have to
12 construct multiple wells to continue to have the peak capacity
13 when available.

14 Right now if you look at some of the small systems we
15 have out there that are 100 percent used and useful, they are
16 not pumping for 24 hours. They have the capability of pumping
17 24 hours. They have the capability of pumping more than 12
18 hours a day, but in reality what my engineers tell me and what
19 I have seen out there is that the 12 hours pretty much match an
20 average time for what the wells pump out there, especially when
21 you don't have storage.

22 If you have storage, yes, there is pumping, there is
23 the capability of storing water, but it's like Mr. Rieger said,
24 you can't store 24 hours worth of water out there. They just
25 don't have that size of facilities to do that. And that was

1 the only point I was trying to make.

2 **CHAIRMAN CARTER:** Okay. Let me go to Commissioner
3 McMurrin, and I will come back if there's further questions.
4 Commissioner McMurrin, you're recognized.

5 **COMMISSIONER McMURRIAN:** Thank you.

6 And, to something you just said, I wanted to start
7 with that, first, Mr. Willis. You said it pretty much matches.
8 Do we have an idea or is there a number in the record anywhere
9 of how much these things are actually pumping? Because we're
10 saying that they are not pumping 24 hours a day, we think 12 is
11 pretty close, but do we know what the number is?

12 **MR. WILLIS:** No, we do not have an exact number in
13 the record.

14 **COMMISSIONER McMURRIAN:** Okay. And I'll move on to
15 something else, and then maybe we will come back to that. I
16 think Ms. Daniel said something about this being a default,
17 because it's the rule, it would apply in any case where someone
18 didn't make an alternative calculation or an argument for an
19 alternative calculation. Do we have any idea how many of the
20 small Class C utilities have storage, and if we were to adopt
21 24, something larger than 12 would be subject to this? Because
22 I guess I'm most concerned about those smaller entities that
23 aren't going to have the ability or the means, perhaps, and, of
24 course, it would add to a lot of rate case expense to argue
25 these issues on a case-by-case basis.

1 **MS. DANIEL:** I don't have an exact number for you. I
2 can tell you that my experience in the industry has been
3 that -- let's say we have 200 water systems in Florida, 25 or
4 30 might have storage. And when they do, it's going to be a
5 very small storage facility.

6 **COMMISSIONER McMURRIAN:** So most of the smaller ones
7 probably don't have storage and wouldn't be impacted by what
8 this number goes to one way or the other.

9 **MS. DANIEL:** That's fair.

10 **MR. RIEGER:** And those that do have storage,
11 Commissioner, are only primarily there because they have to
12 have storage as a result of treatment, and that's very small
13 sometimes.

14 **COMMISSIONER McMURRIAN:** I guess one of the things I
15 was thinking about when Commissioner Argenziano was asking
16 about the 18 was do we have any kind of examples, and maybe
17 this is better posed to the legal staff. Is there some way
18 that we could look at examples of what happens, maybe in prior
19 cases, if you were to use 12 hours, 18 hours, or 24, or would
20 that be looking at some information that is outside the record?

21 **MS. GERVASI:** I think so. I think that you can
22 always look at legal precedence or legal principles, but I
23 don't think we want to be picking factual matters out of prior
24 cases and using that as evidence for this case, that the facts
25 should and need to be based on competent substantial evidence

1 in this record.

2 And there is conflicting testimony about what the
3 right number is, and I think that there is evidence in this
4 record that would support maybe something different than 12. I
5 think that most of the witnesses, including the staff witness,
6 testified that the use of 12 hours a day of pumping reflects
7 the general usage pattern of customers. Of course, OPC
8 differed with that, but their argument was not that customers
9 used 24 hours, but that because pumps are designed to be able
10 to pump 24 hours per day that that's the reason. So it is
11 really a policy difference as to whether you want the number to
12 more closely reflect customer usage or whether you want to use
13 design criteria.

14 **COMMISSIONER McMURRIAN:** Well, it seems like -- I'm
15 sorry, Chairman, I am forgetting.

16 **CHAIRMAN CARTER:** You're recognized.

17 **COMMISSIONER McMURRIAN:** It seems like in the rec you
18 talked about, I think, three different criteria at the end of
19 Page 31. "That the rule must reflect a wide variety of
20 ratemaking issues, including whether the system was prudently
21 designed, whether the design capacity exceeds current customer
22 demand, and whether the system provides quality water." And it
23 seemed to me that you were saying that the proposed rule, you
24 thought, gave a reasonable balance of each of those three. But
25 I have to admit I'm struggling with this, too, because it seems

1 like -- I don't agree with 24. I think there are plenty of
2 reasons not to have 24. I do think that it has probably got
3 less of a rate impact, but I think maybe it doesn't -- maybe it
4 doesn't quite get us to fair, just, and reasonable, which we
5 have to think about, too. That maybe it's not fair, especially
6 to smaller utilities that are probably going to have a harder
7 time arguing that. At the same time you have also told me that
8 there aren't many of the smaller utilities that have storage
9 and would be subject to this anyway. So I guess I'm just
10 sharing with you my quandary.

11 I think there was testimony, and Commissioner
12 Argenziano mentioned this, about the water management district,
13 too; but when I reviewed it, I felt like it wasn't very
14 decisive either way, and probably that is the same with a lot
15 of the testimony we received. It was 24 from OPC, 12 from our
16 staff witness, and then the other witnesses seemed to lean, the
17 utility witness seemed to lean more toward the staff proposal.
18 But, quite frankly, with AUF and UI, I think they are going to
19 be able to make a case in whatever cases they bring for what
20 would be specific to them.

21 So it is really the utilities other than those
22 largest utilities, and perhaps not the smallest of the small
23 utilities that this is probably going to be most likely to
24 apply to. And I'm trying to think what is the best thing to do
25 for them, and perhaps it is bigger than 12, but not 24.

1 **MS. DANIEL:** It is the case that often the systems
2 that have the greater amount of storage capacity are the larger
3 systems, so don't think that -- you are talking, yes, about a
4 small number of utilities, but it is not necessarily the
5 smallest systems that we are addressing here. I mean, the ones
6 with storage and the ones with significant storage are going to
7 be a little bit bigger-sized utility.

8 The best I can tell you, the thing you want to focus
9 in on is we're setting rates, we are not designing systems.
10 And that is the balance that we are struggling with here.
11 That's the pull that you feel is how generous or how
12 conservative do you want to be in a default rule when it comes
13 to how much of the utility's facilities will ultimately be
14 included in rate base for purposes of setting rates. Is it
15 going to be -- you know, 12 hours is 50 percent of 24 hours, so
16 it's that much of an impact on used and useful.

17 **CHAIRMAN CARTER:** One second, and I will come back to
18 you. Had you completed your questions?

19 **COMMISSIONER McMURRIAN:** Yes.

20 **CHAIRMAN CARTER:** Let me check with -- Commissioner
21 Argenziano, you're recognized.

22 **COMMISSIONER ARGENZIANO:** Well, just to that point.
23 Yes, you are correct; 50 percent impact to used and useful, but
24 also a 50 percent impact to the consumer. So it goes both
25 ways. And because we are talking about having such a small

1 amount who could do this, and possibly the newer facilities
2 that will be built in the future, I think it's not going to
3 apply to those many, many facilities who have no storage or
4 have very little storage, because they just can't do it. It's
5 impossible. So I just don't see -- and I guess the point was
6 that the impact is equal to the customer as it is to the
7 utility, and that's where I'm just trying to find that
8 difference.

9 And the other point I just wanted to make was that we
10 say that the 12-hour day is the average customer. I'm not so
11 sure that is very true or has been for a number of years,
12 because we have the CUPs all over the state being violated.
13 They are above and beyond. There's little communities
14 everywhere that are above and beyond their old numbers of what
15 they are using on a daily basis, and I think that probably
16 needs to be looked at as to what they -- and maybe the water
17 management districts, the five water management districts,
18 because it may be different geographically throughout the
19 state, can shed some light in the future as to what the real
20 general use is and what hours per day, because I think that has
21 changed.

22 **CHAIRMAN CARTER:** Commissioners, we are in our
23 question phase.

24 Commissioners, any further questions?

25 **COMMISSIONER McMURRIAN:** I have one.

1 **CHAIRMAN CARTER:** Commissioner McMurrin, you're
2 recognized.

3 **COMMISSIONER McMURRIAN:** This probably goes back to
4 some of what I was asking already, but how is this going to
5 impact when we have staff-assisted rate cases and the staff is
6 sort of setting these numbers for the whole case?

7 **MS. DANIEL:** This default rule will be applicable in
8 staff-assisted rate cases, and should the staff in a
9 staff-assisted rate case want to use some alternative, then it
10 would be incumbent on the staff to come up with that
11 calculation.

12 **CHAIRMAN CARTER:** You're recognized.

13 **COMMISSIONER McMURRIAN:** I'm going to throw this out,
14 but I'm hesitant to do so, to the attorneys. If we were to
15 perhaps need more information with respect to the 12 versus 24
16 hours, what would be our options?

17 **MR. COOKE:** Commissioners, I am not directly familiar
18 with the record in that case, so I would probably defer to
19 staff a little bit. But we have had a record hearing, the
20 record is closed, we would, in general, have to reopen the
21 record if there isn't sufficient evidence to try to find an
22 in-between number the way you have been talking about. I'm
23 just not familiar whether there is enough evidence in the
24 record for you to support some in-between at this point. We
25 need to explore that further because the record is not built up

1 enough. You would need to vote to reopen the record and we
2 would have to have additional hearings and try to find a source
3 for that.

4 **COMMISSIONER McMURRIAN:** A follow-up on that. And I
5 guess Ms. Gervasi probably wants to follow up, but we have in
6 the record 12, we have in the record 24, there might have
7 been -- I think there was some discussion of some number in
8 between, perhaps in questions of the Commissioners during the
9 hearing. Do we have the ability to use any number between 12
10 and 24?

11 **MS. GERVASI:** Yes. There is case law that says you
12 don't have to pick an exact number on something just because
13 those are the only numbers that were being used, and I can't
14 think of the exact case offhand, but so long as your decision
15 is based on competent substantial evidence in the record. If
16 you look at the evidence and you disagree with the arguments
17 for 24 and you also disagree with the arguments for 12, and
18 explain -- and you have a reason based on the record and based
19 on your own knowledge that you think a different number or some
20 number in between works, I know that has been supported before.
21 Not with respect to used and useful, but the same argument
22 would apply, I think, or the same policy.

23 **CHAIRMAN CARTER:** Mr. Cooke, did you also want to
24 make a comment on that?

25 **MR. COOKE:** In general I agree with that. There is

1 case law where we have had hearings and looked at extremes of a
2 continuum, and there was sufficient information in the record
3 to be able to interpolate between numbers. I think we would
4 need to have something in this record that gives us a basis to
5 do that interpolation, but it may be there.

6 Also, I think, Commissioner McMurrian, you focused on
7 those criteria that are discussed in the staff rec on this
8 issue, some of which is policy, so I'm not uncomfortable
9 thinking that there may be a way to come to a middle ground
10 here. But, again, I'm just not that directly familiar with the
11 record itself. But I agree with what Ms. Gervasi said, there
12 is case law that allows us to interpolate between extremes on a
13 continuum. There does need to be competent substantial
14 evidence in the record that would support picking a number in
15 between.

16 **CHAIRMAN CARTER:** Commissioners, any further
17 questions?

18 Commissioner Skop, you are recognized.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

20 I think that Commissioner Argenziano and also
21 Commissioner McMurrian raised some excellent points in
22 listening to the debate and the discussion to the extent that,
23 you know, having the ability to have additional information in
24 some instances is a good thing, because it has a predictive
25 effect, I mean, on looking at, you know, how such an assumption

1 would weigh into, like was mentioned, previous hypothetical
2 rate cases or something like that. But apparently from the
3 discussion I have heard from legal, that doing something like
4 that would require reopening the record as opposed to perhaps
5 just arbitrarily picking an alternate number over and above
6 what staff has recommended. So I think there's merits to going
7 either way.

8 **CHAIRMAN CARTER:** Commissioners, any further
9 questions?

10 Commissioner McMurrin, you're recognized.

11 **COMMISSIONER McMURRIAN:** This is to staff, and it is
12 going put them on the spot, and I apologize, but it's what I
13 do. If the Commission were not to adopt staff's recommendation
14 as is with the 12 hours, what would your next best
15 recommendation be for the number of hours?

16 **MR. WILLIS:** Commissioners, this would be totally not
17 in the record, but if it was up to me for a next best, I
18 wouldn't go to 16. I wouldn't go any higher than 14.

19 **CHAIRMAN CARTER:** Commissioners, any further
20 questions? Thank you. We are beyond our questioning, now we
21 are into our discussion and debate on the issues, and to our
22 debate and discussion on the issues. Or discussion and debate.

23 Commissioner Argenziano, you're recognized.

24 **COMMISSIONER ARGENZIANO:** That brings up another part
25 of the recommendation on the high service pumping.

1 **CHAIRMAN CARTER:** What page is that?

2 **COMMISSIONER ARGENZIANO:** Let me try to find it. I
3 think it's several pages.

4 **MS. DANIEL:** Commissioners, you can look at Issue
5 2 on Page 6. That's the beginning of whether to exclude high
6 service pumping from the definition of storage.

7 **COMMISSIONER ARGENZIANO:** Right. I'm sorry, what
8 page did you say again?

9 **MS. DANIEL:** On Page 6, Issue 2. That's the
10 beginning of whether or not to exclude high service pumping
11 from the definition of storage.

12 **COMMISSIONER ARGENZIANO:** Right.

13 **CHAIRMAN CARTER:** You're recognized.

14 **COMMISSIONER ARGENZIANO:** I have questions on that.
15 I was looking -- I think that, and I'm not sure whether I just
16 need more information, because, again, OPC has some points that
17 I think are legitimate points on the high service pumping, not
18 to include them. And I guess I just need an understanding of
19 why staff or what you think about OPC's opposition.

20 **MS. DANIEL:** I can give you a pretty succinct answer
21 to that. Although there was testimony that it should be -- a
22 separate calculation might be the best alternative, the
23 majority of the testimony was that that calculation would be
24 very complex and would require a lot of judgment and, in my
25 opinion, would not be easy to put into a rule format.

1 **MR. RIEGER:** In addition, Commissioner, the high
2 service pumping percentage-wise as to the total cost combined
3 with the storage is very, very minimal. And the idea that a
4 high service pump and storage as far as staff's perspective is
5 that they are considered as a unit. You can't have one without
6 the other, and that's what traditionally we have looked at
7 overall that the storage -- when storage is necessary, you have
8 high service pumps to deliver flow out of that storage and they
9 are traditionally considered a one-unit item, even though they
10 operate differently, and as was pointed out that the pumps are
11 gallons per minute and storage is just basically gallons,
12 volume. But they are linked together and the difference in
13 price or cost is minimal and basically should be considered as
14 a unit more individually determined out between each other,
15 storage and high service.

16 **CHAIRMAN CARTER:** We are in discussion and debate.
17 Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** A question may pop up.

19 **CHAIRMAN CARTER:** That's all right go ahead and ask
20 your question.

21 **COMMISSIONER ARGENZIANO:** But if you don't separate
22 the storage facility when you -- let me see if I can rephrase
23 it, because in my mind it is mumbo jumbo, and I am reading some
24 of the testimony as I speak. But I guess OPC believes that if
25 you don't separate for the purposes of percentage and in used

1 and useful it's -- I didn't say that right, either.

2 **MS. DANIEL:** Commissioner, may I help you?

3 **COMMISSIONER ARGENZIANO:** Yes, please.

4 **MS. DANIEL:** It's a mismatch. The storage is based
5 on quantity, the high service pumping is based on gallons per
6 minute. My response to that is we looked at some annual
7 reports for some utilities. What we found was that for those
8 systems that did have storage, we looked at the NARUC system of
9 accounts where you would find the high service pump.
10 Oftentimes there was no dollar amount in the high service pump
11 category, it was all lumped in with the cost of the storage.

12 When we did see the cost of high service pumping,
13 let's say, for example, you had a twenty or \$50,000 storage
14 facility. The cost of the pump was \$2,000. Now, I didn't look
15 at every system that had storage, but what I'm telling you is
16 we're talking about an adjustment on two, or five, maybe
17 \$10,000, and to us that was not a cost-effective calculation to
18 be putting in a default rule.

19 If there is an opportunity or a question as to
20 whether those high service pumps are perhaps oversized, that to
21 us made more sense to put as an alternative calculation, to do
22 a separate calculation. That combined with the complexity of
23 what that calculation would look like, it just didn't make
24 sense for a default rule to us.

25 **COMMISSIONER ARGENZIANO:** Thank you.

1 **CHAIRMAN CARTER:** Commissioners, any further? We are
2 in discussion and debate. Any further discussion; any further
3 debate?

4 Commissioner Argenziano, you're recognized for a
5 motion.

6 **COMMISSIONER ARGENZIANO:** Well, I don't where it is
7 going to go, but I move to deny staff's recommendation and move
8 to a 16-hour, only because I think it is somewhere in the
9 middle and may reduce rates.

10 **CHAIRMAN CARTER:** Before I ask for a second, let me
11 ask Mr. Cooke does this mean we will have to surgically remove
12 a section of the rule, or does it rise and fall in toto?

13 **MR. COOKE:** Commissioner, I think there is just the
14 one issue that there are questions about, which is the 12
15 versus 24 hours. I think that is Issue 10. And what the
16 motion is proposing is an alternative, or to not accept staff's
17 recommendation, but the Commission would be making a decision
18 on that. At this stage of the rulemaking we are going to have
19 to issue a notice of change, because as a result of the hearing
20 a number of changes are being proposed to what was proposed in
21 the original language. So we can go forward with the whole
22 rule as long as the Commission comes to closure on all of these
23 issues.

24 Now, if you're asking me procedurally, it sounds to
25 me like what the Commission wants to do is accept all of the

1 staff's recommendations on all issues but Issue 10, and there
2 is a proposal to change Issue 10, if that's clear.

3 **CHAIRMAN CARTER:** I'm kind of thinking aloud with
4 you, too. Does that mean that the process in terms of where we
5 are procedurally we will have to go back and begin anew?

6 **MR. COOKE:** With the rulemaking, no, Chairman.

7 **CHAIRMAN CARTER:** Commissioners, I was asking a
8 question to kind of help us all be on the same page at the same
9 time. You have heard from -- as I said, I wanted to wait
10 before asking for a second on that. You heard what Mr. Cooke
11 has said. Are there any questions based upon where we are now?

12 Commissioner Edgar, you're recognized.

13 **COMMISSIONER EDGAR:** Thank you, Chairman Carter.

14 I guess -- Commissioner McMurrian said earlier that
15 she was struggling, and I wasn't, but now I am. You know, we
16 have had a lot of good questions and a lot of good discussion,
17 and our staff has pointed out, and I think a few of us have
18 chimed in, potentially in agreement, that there doesn't seem to
19 be that one magic number that everything points to.

20 I have, though, some discomfort with choosing a
21 number that seems more arbitrary to me than the 12 that our
22 staff has recommended. So I guess I am struggling, again, to
23 use Commissioner McMurrian's earlier phrase, as to what points
24 to 16. Realizing that rarely when we sit up here are things
25 absolutely crystal clear and 100 percent in one direction or

1 another, but I have heard some testimony and met with staff to
2 hear in more detail than we have today their analysis and
3 thought process pointing to the 12 and that seemed to make some
4 sense to me.

5 So I guess I'm looking for is there something in the
6 record that points to 16 as more appropriate than 12, just to
7 help flesh it out a little more.

8 **CHAIRMAN CARTER:** Staff.

9 **MS. GERVASI:** There is evidence in the record that
10 questions whether there is a magic number, whether 12 is always
11 going to work. And there are other factors involving aquifer
12 recharge and so forth, as well. I think that the record shows
13 that 12 is supportable because it seems to fit all of the
14 criteria that we are looking at. It also is more reflective of
15 what the past Commission practice has been over many years or
16 in many cases where 12 has been used.

17 OPC certainly put that into question, and I think
18 that there is probably enough in there to show that 12 may not
19 be the exact right number, it's probably most reflective, but
20 at least one party disagrees with it for various reasons. I
21 don't think there is anything in the record to say that 16 is
22 the right number, but I think you could probably come up with
23 something in between the two if you believe it's most
24 appropriate to do so.

25 **CHAIRMAN CARTER:** Commissioner Skop.

1 Well, had you completed your line of questioning?
2 Commissioner Edgar.

3 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman, just to
4 kind of round out on that.

5 I appreciated Commissioner Argenziano's comment
6 earlier about shaking the tree sometimes, and when we talk
7 about in many instances when we are here as to what was perhaps
8 deemed determinative in some prior decisions and past policy,
9 and incipient policy, and I always find that helpful because,
10 of course, we were always here all of us for all of that. And
11 so to hear kind of what has lead up to some of the decisions,
12 and I like to be able to put, you know, the eye of current
13 knowledge on all of those and look forward, but I do continue
14 to have some discomfort with, in an analytical post-hearing
15 process, choosing a number that seems to be somewhat arbitrary,
16 and I'm still thinking that through.

17 **CHAIRMAN CARTER:** Commissioner Skop, you're
18 recognized.

19 Remember, Commissioners, just for the sake of
20 posture, we did not take a second because I wanted you to hear
21 from our General Counsel on procedurally where we were, and we
22 were talking primarily about Issue 10.

23 Commissioner Skop, you're recognized.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chair, and that
25 was the subject of my question I was going to ask, to direct it

1 to our General Counsel. With respect to, again, the
2 hypothetical, assuming for the sake of discussion the proper
3 motion on the table was properly second, and the Commission
4 ruled affirmatively on adopting the 16 hours in lieu of the 12
5 proposed by staff. Ultimately, we'd issue, I think, another
6 notice in the Florida F.A.C., notice that the rule had been
7 changed, and then I guess that would be subject to protest by
8 parties, or if no protest was received, then it could go into
9 effect. Is that my correct understanding?

10 **MR. COOKE:** There would be a 21-day period in which
11 parties could challenge the rule, but at that point the rule
12 would go over to the Division of Administrative Hearings. It
13 wouldn't come back to us.

14 **COMMISSIONER SKOP:** Thank you.

15 **CHAIRMAN CARTER:** Commissioner Argenziano, you're
16 recognized.

17 **COMMISSIONER ARGENZIANO:** Just to kind of make
18 additional comments to some of the things that we have had said
19 and some of the great discussion going on. And what I see,
20 Commissioner Edgar, is that the arbitrary number has been 12,
21 because I can't find any definitive answer as to why 12 is
22 there. Every time I get an answer, I have a response, and it
23 is like, okay, that's true, too. So 12 is just as arbitrary as
24 my 16. But I think that, you know, hearing that this is what
25 we have done in the past, or this is just the way it always has

1 been done doesn't make me feel that that is something that was
2 specifically designed.

3 And I want to read something very quickly from OPC's
4 testimony which really sticks to me, because I'm a Commissioner
5 here, I look for efficiencies, also, and that is part of my
6 statutory goal. So if you can run the pump at 16 hours then
7 you are definitely getting greater efficiency. But reading
8 this it says, "Basing the reliable capacity on 12 hours of
9 pumping after removing the largest well for service essentially
10 doubles the used and useful of a water treatment system for no
11 reason other than it has storage."

12 So without having any real understanding of why 12 is
13 the arbitrary number that has been picked without good cause to
14 show me, I'm thinking that it is just the used and useful
15 calculation that is being looked at. So to split that and give
16 the consumer a little bit of a break and getting a greater
17 efficiency, which I'm statutorily required to do, I believe
18 that the 16 hour does that for both the company and the
19 consumer, and that is why I moved to deny staff and move to 16.

20 **CHAIRMAN CARTER:** Commissioners, any further
21 questions on Item 10? It has been moved. Any further
22 questions before I --

23 **COMMISSIONER EDGAR:** Yes, sir, I have a question.

24 **CHAIRMAN CARTER:** Commissioner Edgar and then
25 Commissioner Skop.

1 Commissioner Edgar, you're recognized?

2 **COMMISSIONER EDGAR:** A question to staff. Is the
3 recommendation of 12 in Issue 10 arbitrary?

4 **MS. GERVASI:** No. The answer is no, it is not
5 arbitrary. It is based on testimony of various witnesses, and
6 I think perhaps Witness Guastella may have summed it up best by
7 saying that 12 hours provides a reasonable balance, and it is a
8 balancing act that we are looking for. It recognizes typical
9 consumption characteristics in terms of time periods, and also
10 recognizes the typical practice of resting wells to allow time
11 for recharge. Three of the four witnesses agreed with that.

12 If you wanted to choose 16 hours, you probably would
13 want to find that that would be enough time for recharge. At
14 least it provides some time for recharge. I don't know that
15 there is anything in the record to say that it recognizes
16 typical consumption characteristics. You would probably want
17 to find that there is not a need to recognize typical
18 consumption characteristics, because I think 12 hours is the
19 number that the record reflects as being the right number for
20 usage.

21 **COMMISSIONER EDGAR:** And I guess to follow up on my
22 question then, I recognize we all bring our own experiences and
23 individual interpretations, but my listening through the
24 hearing and to the testimony and reviewing the information that
25 we have and discussing with staff prior to today, I did not in

1 my own individual interpretation as only, of course, one person
2 see 12 as arbitrary, nor did I see 12 as being the staff
3 recommendation simply because it is something that has been at
4 times used in the past. But that is just my own
5 interpretation.

6 **CHAIRMAN CARTER:** Commissioner, let me go to
7 Commissioner Skop first, and then I will come back to you.

8 Commissioner Skop, you're recognized.

9 **COMMISSIONER SKOP:** Thank you, Mr. Chair. Just a
10 quick follow up to the point that was just made by staff.
11 Correct me if I'm wrong, but I think that we talk about well
12 resting and whatever, but aren't we, in effect, talking about
13 apples and oranges. Because the assumption of the number for
14 the purposes that we are using it, and, believe me, I will
15 stand to be corrected if I'm wrong, but the number that we are
16 choosing is just merely a number that reflects a number that is
17 used in rate calculation and so forth and so on in the used and
18 useful calculation. It doesn't reflect the actual operation of
19 the pump. So, how does the well resting -- I mean, I think it
20 tends to take actual practice and put it into theory in terms
21 of used and useful calculation, but that is not necessarily the
22 case. I mean, one is the pump may or may not be operating for
23 16 hours a day, or 12 hours a day, or any time at all. So the
24 whole well resting thing seems to be a little bit -- you know,
25 it's instructive, but to me not dispositive of the number we

1 choose for the used and useful calculation. Is that correct?

2 **MR. RIEGER:** That is correct. Even staff's own
3 witness from the water management district, as we discussed
4 earlier, it was pretty indecisive about what he was pointing
5 out as to, well, maybe it does and maybe it doesn't, and that
6 is pretty much the way we walked around that scenario.

7 **COMMISSIONER SKOP:** Okay. Because the reason I ask,
8 because what you guys just said didn't come across that way.
9 It came across as being decisive and definitive that well
10 resting in a consideration for driving the 12.

11 **MR. RIEGER:** No.

12 **COMMISSIONER SKOP:** Which really I don't think is the
13 case.

14 **MR. RIEGER:** It is just a recommended value based on
15 prior experience, and to do this you would have to definitively
16 determine on a case-by-base basis of what actually is going on
17 for the utility's individual wells, and there may or may not be
18 studies out there reflecting that.

19 And on the other side as far as customer usage, as
20 far as I know there is very little recordkeeping on an
21 hour-to-hour basis as to when do the customers or how often do
22 the customers actually use the system. These meters are read
23 on a daily basis, and although some of the larger systems may
24 have flow charts that indicate on an hour-to-hour basis,
25 typically that is not the case.

1 **COMMISSIONER SKOP:** So correct me again if I'm wrong,
2 but I know the intent is to take best practice and apply it
3 into rulemaking for some relevance of used and useful
4 calculation, but I think from what I am hearing is that the 12
5 is just as arbitrary as the 16.

6 **MR. RIEGER:** There is some foundation based on just
7 past history and experiences, but it was based on some
8 determined number; but as far as pinpointing, no, you are
9 correct.

10 **COMMISSIONER SKOP:** Okay. And like I said, it's not
11 to be debated or anything like that, I just wanted to further
12 clarify, because again what came out to the bench I thought was
13 definitive in, no, that 12 is supported by that.

14 Again, I don't know what the right number is. You
15 know, we rely on testimony. We want to model it to actual
16 experiences, but, again, I think that equally staff has the
17 duty of candor, too, not to come across in some -- I wanted to
18 flesh that out a little bit, because what I was hearing made no
19 technical sense to me. So I'll yield.

20 And then one other question to Mr. Cooke. What would
21 be the proceeding if we wanted to get additional testimony to
22 reflect further definitization of what the number should be if
23 there are some differences of opinion on the Commission as to
24 whether 12 or 16 or 14 or 11 is the right number, what posture
25 would we have to go into? Would it be full rulemaking or could

1 we go into a limiting proceeding to readily establish that
2 number and take additional testimony?

3 **MR. COOKE:** In this rulemaking we went into a
4 hearing, an evidentiary hearing, and if we need additional
5 testimony we would have to vote to reopen that hearing. We
6 would to get dates and do proper notice and conduct additional
7 presentation of evidence through witnesses, et cetera.

8 **COMMISSIONER SKOP:** Mr. Chair, again, I think that as
9 you properly stated, we're in discussion as to the pending
10 motion before us. To me I do see merit in both positions. You
11 know, I think that there has been some expressed desire to get
12 some additional information. Typically, I do support staff's
13 recommendation, but I recognize that this number is not easily
14 or readily fixed, so I just kind of wanted to throw that out
15 there and hear some additional --

16 **CHAIRMAN CARTER:** Thank you, Commissioner.

17 Before I come back to Commissioner Argenziano, Mr.
18 Willis, you were sitting on the edge of your seat. I don't
19 want you to fall down, so tell us what was on your mind.

20 **MR. WILLIS:** Thank you, Chairman.

21 I just wanted to point out that both Mr. Cooke and
22 Ms. Gervasi pointed out awhile ago that this is a lot like rate
23 of return testimony. You have heard evidence on both ends, and
24 I think you are free to select something in between if you do
25 not like either result. I think case law does support that,

1 even though I'm not an attorney, but I do know a lot about rate
2 of return testimony and case law does support that.

3 **CHAIRMAN CARTER:** He's not an attorney, but he plays
4 one on TV. (Laughter.)

5 Commissioner Argenziano, you're recognized.

6 **COMMISSIONER ARGENZIANO:** Thank you. Because it is
7 an important issue, I just have to respond to a couple of
8 things. I don't believe that the 12 hour is definitive. I
9 really assumed, because for your answer you went for a stretch
10 there well resting and also aquifer recharge. That is not what
11 we are here about, and I did ask the water management district
12 that the last time, because just as a citizen of the state of
13 Florida aquifer recharge has been a real concern of mine over
14 the years. But that is another story. That is called carry
15 capacity, and maybe DCA should stop the build-out of Florida, I
16 don't know.

17 But that is not what is in front of me. I did ask
18 that. And what was in front of me is rates and efficiencies.
19 And 12 hour is just as arbitrary as the 16 hour, because I
20 don't hear anything other than -- no specifics, nothing
21 definitive other than this is the way we have done it, well
22 resting and aquifer recharge. That's not, to me, definitive.
23 And just because it has been done that way and there is case
24 law that does show that you don't have to have the exact
25 numbers just because they were used in the past. They may have

1 been wrong in the past, or they may have been right for the
2 past but not right for now. And that's my concern, because I
3 don't hear anything definitive as to why to use 12 other than
4 those that I just mentioned.

5 I think that the 16 hour goes to very few facilities,
6 but in those facilities that can do that we would get a greater
7 efficiency for the consumer, and that is my number one goal
8 along with making sure that the company is healthy and doing
9 business. But to me the 12 hour just -- I didn't have enough
10 basis there. I don't think I heard enough to convince me that
11 wasn't anything but just as arbitrary as the 16.

12 And there was one other thing I wanted to say and
13 that is -- oh, the customer use. I am almost certain if you
14 look around the state, and I have been involved in water issues
15 for probably the last 20 years. It may be a little different
16 than the ratemaking, but if you look around the state the
17 customer use has changed dramatically, and I think the 12 hour
18 day is not realistic anymore.

19 You have growth that needs to be taken into
20 consideration, and those numbers have changed, and to me that
21 says what is coming in the future. When our new plants are
22 built, they are going to have to change also. So I don't use
23 the customer number that you are using today. I look at it a
24 little differently out in the real world, what I think it
25 really is. So, Mr. Chair, that is just all I have to say. I

1 don't want to beat it to death. That is just my concern with
2 it. And I wish there was more of a basis for the 12 hour
3 because it wouldn't leave me hanging. And so I don't agree
4 with 24 hours either. But, you know, aquifer charge, a very
5 important thing. The water management districts needs to be
6 dealing with that with DEP, and they are. So with that, I
7 would move to deny staff and move to the 16 hour.

8 **CHAIRMAN CARTER:** Thank you, Commissioner.

9 Before we do it, let me get one further question from
10 Commissioner McMurrin and just kind of put us in the
11 procedural posture, Commissioners. We are only looking at
12 pulling out Issue 10. That's all we are looking at out of Item
13 3. We are just look at pulling out Issue 10; that's all we are
14 talking about.

15 So, Mr. Cooke, we're on solid ground on dealing with
16 that, correct?

17 **MR. COOKE:** Yes, Chairman.

18 **CHAIRMAN CARTER:** Okay. Commissioner McMurrin,
19 you're recognized.

20 **COMMISSIONER McMURRIAN:** Thank you.

21 I wanted to go back to that point of Ms. Gervasi, I
22 think, before she said well resting, and we all heard that, and
23 talked about that a good deal. She said that Mr. Guastella's
24 testimony pointed to the 12-hour period providing a reasonable
25 balance, and then she went on to say it also recognizes well

1 resting, which is what was on the Staff rec on Page 29. And
2 this was something I was thinking about asking earlier, and I
3 think I want to ask it now.

4 We have talked about how we have used 12 hours for
5 years. My guess is that we have used 12 hours because it was
6 halfway between zero and 24, and that that gets to that
7 reasonable balance point. Is that really the basis for the
8 12-hour time frame?

9 **MR. RIEGER:** Typically, the 12 hours, or the two
10 criteria, the majority of the customer usage does reflect
11 customer usage, which there are arguments one way or another
12 towards that, plus the use of the aquifer recharge. And,
13 basically, we're concerned that the utility has to provide the
14 service during the peak more times than the average to have
15 that capacity to be there, and the facilities just seemed to
16 match with that number. And we basically have seen over the
17 years little negative impact as far as that was the wrong
18 number to use.

19 **COMMISSIONER McMURRIAN:** That 12 was the wrong
20 number?

21 **MR. RIEGER:** I mean, that wasn't the wrong number to
22 use, the 12.

23 **COMMISSIONER McMURRIAN:** I see.

24 **MS. DANIEL:** And, Commissioner, if I could add to
25 that. The 12 hours reflects when people are awake and using

1 water. That's the 12 hours.

2 **COMMISSIONER McMURRIAN:** I guess, Commissioners, just
3 to sort of share my thoughts out loud, and I did say I was
4 struggling with this, and I think it was because I didn't feel
5 like -- I do not think that 12 is arbitrary, but nor do I think
6 the 16 is arbitrary. I think that you can make a reasonable
7 basis for these numbers somewhere between 12 and 16. I would
8 feel more comfortable staying closer to 12.

9 I think consistent with what Mr. Willis said 14, I
10 was thinking, you know, if we were to move off of it a little
11 bit, I think I could feel comfortable, it's a default, we're
12 not moving far off 12, but perhaps with the comments that have
13 been made about customer usage may not track exactly to 12, but
14 we don't think it tracks exactly 16 either, perhaps, that that
15 may be a little bit too far. But I think it could be
16 reasonable to move a little bit further than 12 and to 14.

17 I have a lot of discomfort about 16, I guess, because
18 I feel like maybe that is going a little bit too far for a
19 default, because this is going to apply in any case where
20 someone doesn't make a separate calculation. But they do
21 always have that provision of the rule, whether it is OPC or
22 any of the parties, to use that alternate calculation. I'm
23 comforted there that at least whenever we have separate
24 circumstances that justify it, we could do 16, or even more
25 than 16, or perhaps 12 is not even the right number and you

1 could even go the other way in a case.

2 So I guess where I am is I would feel more
3 comfortable if we were going to move from 12 -- and, again, I
4 don't think 12, 14, or 16 would be arbitrary based on the
5 discussion we have had and the evidence in the record. I'm not
6 sure how to go about this, but perhaps I could offer a friendly
7 amendment to the motion to make it 14 instead of 16 and see
8 where that gets us.

9 **CHAIRMAN CARTER:** Hang on one second.

10 Mr. Cooke, I'm trying to keep us procedurally,
11 because we are on Issue 10 from Item 3, and you said that there
12 is a way to deal with that without having to go back through
13 the entire rulemaking process.

14 Now, you heard what Commissioner McMurrian said, and
15 all of the Commissioners have said on this, and you heard the
16 motion by Commissioner Argenziano, as well as Commissioner
17 McMurrian's modification of that motion. What can you advise
18 us in terms of where we are now in the context of Issue 10? I
19 just want to be able to make sure that we have -- obviously we
20 have had a vigorous and forthright debate. I just want to make
21 sure that we do the right thing based upon the procedures here.
22 Can you help us out, please, sir?

23 **MR. COOKE:** Commissioner, we don't follow Roberts
24 Rules of Procedure, per se. I think that the issue here is
25 trying to come to consensus on Issue 10, which I'm hearing is

1 the only issue that the Commission might want to make changes
2 to.

3 Commissioner Argenziano made a motion; so far it
4 hasn't been seconded. I think if she would like to entertain
5 Commissioner McMurrian's suggestion that would be good
6 information to have at this point, and then see where it goes.

7 **CHAIRMAN CARTER:** Let me do this.

8 Commissioner Skop, I will come to you in a minute.

9 Let me do this. Commissioner Argenziano, you heard
10 General Counsel and you heard Commissioner McMurrian, what is
11 your -- let me hear your thoughts on that.

12 **COMMISSIONER ARGENZIANO:** Okay. And I will make it
13 very short, but when I read Mr. Guastella's testimony once
14 again, he testified that designing a system to have only 12
15 hours of operation is not prudent. So I tried not to go to 24.
16 I tried to meet in the middle, so I would rather just vote no
17 if it is anything less than 16. And I can lose the motion, I
18 don't care. As an individual Commissioner, I think I met
19 halfway, and --

20 **CHAIRMAN CARTER:** Excuse me for cutting you off,
21 Commissioner, but I do believe that Commissioner McMurrian, and
22 correct me if I'm wrong, I think you did say 16, did you not?

23 **COMMISSIONER ARGENZIANO:** No.

24 **COMMISSIONER McMURRIAN:** 14.

25 **CHAIRMAN CARTER:** Thank you.

1 **COMMISSIONER ARGENZIANO:** I said 16.

2 **CHAIRMAN CARTER:** Oh, you said 16. I knew I heard it
3 someplace.

4 Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

6 Just one quick follow up on Commissioner McMurrian's
7 question to our General Counsel. Would I be correct to
8 understand that -- I mean, if we change this from 12 to 16 and
9 vote on it, we still have to go through the 21-day notice and
10 then subject to protest. If we, for the sake of discussion,
11 and I have heard this, I think, once or twice, but it seems to
12 me that there wants to be discretion, or at least there is some
13 view to have the discretion within the rule to apply the
14 appropriate number, whether it be 12 in some cases, or 16 in
15 others, if something were fashioned in a manner like that that
16 would provide the -- you know, 12 is a default with the
17 discretion to use 16 or another appropriate number as the
18 Commission deems appropriate. Would that put us in the same
19 posture where the rule, if it were changed on the fly like
20 that, would still go through the same procedure, a 21-day
21 notice and then protest or then go into effect?

22 **MS. GERVASI:** The notice of change will need to be
23 published if the Commission makes any changes at all to what
24 the rule looked like when it was initially proposed.

25 **MR. COOKE:** I thought you were asking whether this is

1 a default number.

2 **COMMISSIONER SKOP:** Well, let me clarify.

3 Commissioner McMurrian raised the point, and actually I thought
4 she was going to go in one direction and then she kind of
5 pulled back from that. Instead of 14, if we had the
6 discretion, say we made it 16 with the discretion to choose a
7 different number less than that, or 12 with the discretion to
8 use a higher number at our discretion within the scope of the
9 modified rule that we are changing here. So, my understanding,
10 if that were to happen, other than me just seconding the
11 motion, which I'm willing to do, but tweaking it like that
12 would just go through the same procedural process to the extent
13 that if it was 12 by default with the discretion of the
14 Commission to choose a higher number as deemed appropriate by
15 the Commission, then it's just a matter of changing that
16 language, noticing for 21 days, and then subject to it not
17 being protested, it becomes a proper rule. Is that correct?

18 **CHAIRMAN CARTER:** Commissioners, hang on a second.

19 And, Mr. Cooke, hold on, just to give you an opportunity to
20 kind of just collect your thoughts and all like that. I did
21 promise to give the court reporter a break, and I think it
22 seems like we are at a breaking point. We are talking
23 primarily about Issue 10 from Item 3, and there may be an
24 opportunity with our legal staff to look at that to give the
25 Commissioners some leeway. You've heard our discussion and

1 heard our debate and all like that, and let's just kind of take
2 ten minutes and let you guys look at the law books, and Black's
3 Law Dictionary, or whatever you look at, and you have gotten a
4 feel for where the Commissioners are, and if we can resolve
5 this, let's resolve it. If we can't, let's move on and take
6 care of the rest of the portion of the issues that are confined
7 within Item 3.

8 So, with that, Commissioners, we are on a ten-minute
9 break.

10 (Recess.)

11 **CHAIRMAN CARTER:** We are back on the record. And
12 when we last left there was a motion by Commissioner Argenziano
13 to deny staff's recommendation on Issue 10.

14 Commissioner Skop, you're recognized.

15 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

16 And to that point, I would like to second the motion.
17 And I'm comfortable doing so just simply by virtue of Item
18 Number 3 and the rule where the utility would have the burden
19 of proof, and under that Subsection 3 of showing that a
20 different calculation should apply. So, again, they have that,
21 but they also have the burden of proof, so I'm comfortable
22 seconding Commissioner Argenziano's motion, and I will leave
23 that burden to the utility should they wish to do that on a
24 case-by-case basis.

25 **CHAIRMAN CARTER:** Okay. Commissioners, we have

1 had -- I mean, if there is any further discussion or debate?

2 Hearing none, there is a motion that has been
3 properly seconded on the floor that we deny staff's
4 recommendation on Issue 10. All those in favor let it be known
5 by the sign of aye.

6 **COMMISSIONER SKOP:** Aye.

7 **CHAIRMAN CARTER:** Aye.

8 **COMMISSIONER ARGENZIANO:** Aye.

9 **CHAIRMAN CARTER:** Those opposed?

10 **COMMISSIONER McMURRIAN:** Nay.

11 **COMMISSIONER EDGAR:** Nay.

12 **CHAIRMAN CARTER:** Show it approved.

13 Now we are back on the issues in Item 3 over and
14 above Item 10. Any discussion?

15 Commissioner Edgar, you are recognized.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

17 I will vote to approve the staff recommendation,
18 excuse me, make the motion to approve the staff recommendation
19 on the remaining issues for Item 3.

20 **COMMISSIONER McMURRIAN:** Second.

21 **CHAIRMAN CARTER:** It has been moved and properly
22 seconded that we adopt staff's recommendation on the remaining
23 issues in Item 3. All those in favor, let it be known by the
24 sign of aye.

25 (Unanimous affirmative vote.)

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CHAIRMAN CARTER: Those opposed, like sign.
Show it done.

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STATE OF FLORIDA)

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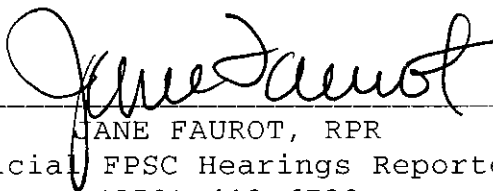
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st day of April, 2008.



JANE FAUROT, RPR
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