

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

4 In the Matter of:

5 PETITION BY CUSTOMERS OF ALOHA UTILITIES, INC. FOR DELETION OF  
6 PORTION OF TERRITORY IN SEVEN SPRINGS AREA IN PASCO COUNTY.

DOCKET NO. 020896-WS

7 APPLICATION FOR INCREASE IN WATER RATES FOR SEVEN SPRINGS SYSTEM IN  
8 PASCO COUNTY BY ALOHA UTILITIES, INC.

DOCKET NO. 010503-WU

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14 PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 5

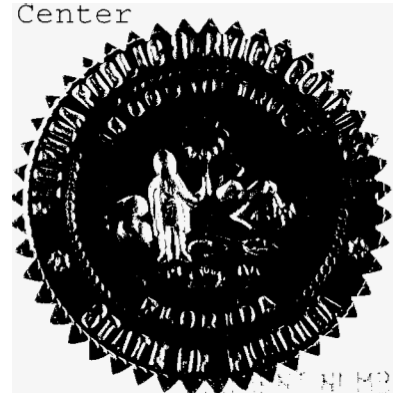
15 BEFORE: CHAIRMAN BRAULIO L. BAEZ  
16 COMMISSIONER J. TERRY DEASON  
17 COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

18 DATE: June 29, 2004

19 TIME: Commenced at 1:06 p.m.  
20 Concluded at 4:27 p.m.

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

23 REPORTED BY LINDA BOLES, RPR  
24 Official FPSC Reporter  
(850) 413-6734



25

1 PARTICIPATING:

2           MARSHALL DETERDING, ESQUIRE, and DAVID PORTER,  
3 representing Aloha Utilities, Inc.

4           STEPHEN BURGESS, ESQUIRE, representing the Office of  
5 Public Counsel.

6           SENATOR MIKE FASANO, representing his constituents.

7           V. ABRAHAM KURIEN, M.D., representing V. Abraham  
8 Kurien, M.D.

9           WAYNE FOREHAND, representing the Citizens Advisory  
10 Committee.

11           ROSANNE GERVASI, ESQUIRE, CHUCK HILL, PATTI DANIEL,  
12 TOM WALDEN, and TIM DEVLIN, representing the Commission Staff.

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

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2 CHAIRMAN BAEZ: We'll reconvene this agenda  
3 conference. And, Commissioners, we are on Item 5.  
4 Ms. Gervasi.

5 MS. GERVASI: Commissioners, Item 5 is staff's  
6 recommendation concerning Aloha Utilities, Inc.'s motions to  
7 dismiss the deletion petitions filed in Docket Number  
8 020896-WS; Aloha's motion to modify the rate case order issued  
9 in Docket Number 010503-WU; what additional steps Aloha should  
10 take to address the black water problem occurring in customers'  
11 homes; and what further action the Commission should take at  
12 this time on the deletion petitions.

13 Issue 1 is Aloha's request for oral argument on its  
14 motions to dismiss, which are the subjects of Issue 3. Staff  
15 recommends that oral argument should be granted with respect to  
16 the motions to dismiss, and that interested persons may  
17 participate on Issues 4 through 7 as well.

18 Issue 2 is staff's recommendation to grant Aloha's  
19 motion to strike Dr. Kurien's supplemental response to Aloha's  
20 motion to dismiss.

21 Issue 3 is staff's recommendation to grant in part  
22 and deny in part the motions to dismiss the deletion petitions.

23 And Ms. Daniel will introduce Issue 4, after which  
24 I'll introduce the remaining issues.

25 MS. DANIEL: Commissioners, Issue 4 addresses Aloha's

1 motion to modify the rate case order. Staff filed a written  
2 modification to its recommendation this morning. The revised  
3 recommendation is to grant Aloha's motion in its entirety to  
4 modify the rate case order, to require that the testing for  
5 sulfides be done at the point where the water leaves the  
6 treatment facility, and to require Aloha to file comments  
7 within 60 days of the Commission vote regarding the feasibility  
8 of collecting and testing monthly water samples at domestic  
9 meters.

10 This recommendation varies from the recommendation  
11 filed on June 17th which recommended that the testing for  
12 sulfides be done at the point of delivery with the customers'  
13 piping. In the recommendation filed on June 17th, technical  
14 staff attempted to address OPC's answer to Aloha's motion which  
15 was received on June 16th, one day before the recommendation  
16 was to be filed.

17 Subsequent review of that recommendation revealed  
18 that staff's analysis of the comments filed by OPC on behalf of  
19 Dr. Kurien was insufficient. For instance, staff failed to  
20 fully recognize all of the problems that may be associated with  
21 collecting water samples at the meters instead of at the  
22 treatment facilities.

23 Staff would also like to note that on June 24th Aloha  
24 filed comments to the staff recommendation, including comments  
25 on a staff's original recommendation on this issue.

1 MS. GERVASI: Issue 5 is staff's recommendation that  
2 Aloha be strongly encouraged to offer low interest loans or  
3 rebates to customers in the Seven Springs service territory who  
4 wish to replace their existing copper pipes. Aloha's June 24th  
5 filing indicates that Aloha is willing to voluntarily implement  
6 a low cost loan program in the interest of repairing customer  
7 relations and includes some additional suggestions with respect  
8 to this issue.

9 And then finally Issue 6 is staff's recommendation  
10 that the Commission should decline to take further action on  
11 the deletion petitions until after Aloha has had an opportunity  
12 to implement a new treatment process, and that staff will bring  
13 a recommendation for further action on the deletion petitions  
14 as soon as practicable after the February 12th, 2005, treatment  
15 implementation deadline.

16 Regarding participants who are present to address the  
17 Commission, Senator Mike Fasano is present. I don't know  
18 whether Representative Fiorentino is present. She may be here  
19 at some point during the item. Also, of course, Aloha is  
20 present, Mr. Marty Deterding is here on behalf of Aloha,  
21 Mr. Steve Burgess on behalf of the citizens, and a number of  
22 customers are present as well, including Dr. Kurien and certain  
23 other customers who may also be interested in addressing the  
24 Commission. Staff is, of course, present to answer any  
25 questions, and we would recommend that the Commission go ahead

1 and take up Issue 1 first to determine which issues parties and  
2 interested persons may address.

3 CHAIRMAN BAEZ: Thank you, Ms. Gervasi.

4 Commissioners, on Issue 1 --

5 COMMISSIONER JABER: Move Issue 1.

6 MR. DETERDING: Excuse me, Commissioner. I  
7 apologize. We don't believe that oral argument is necessary on  
8 that issue. I do want to make a couple of comments on Issue 3,  
9 but they're basically in support of the staff recommendation.

10 COMMISSIONER JABER: I'm sorry. I didn't understand.

11 MR. DETERDING: And I apologize. I realize that  
12 Issue 1 is -- I'm not supposed to speak on, but I just wanted  
13 to say that we do not believe the oral argument is necessary.  
14 If the Commission wishes it, we can, we can move forward.

15 CHAIRMAN BAEZ: Thank you, Mr. Deterding.

16 COMMISSIONER JABER: No. What I didn't understand,  
17 Mr. Deterding, is you don't think oral argument is necessary on  
18 which issue?

19 CHAIRMAN BAEZ: On which issues?

20 MR. DETERDING: On Issue 3, which I believe is what  
21 Issue 1 deals with. I have a few comments, but just minor  
22 comments: One being in support, and then a concern with some  
23 of the wording in Issue 3.

24 CHAIRMAN BAEZ: Well, you know, I'll tell you what.

25 Let us -- let's let the Commissioners exercise their right to

1 accept oral argument.

2 MR. DETERDING: Absolutely.

3 CHAIRMAN BAEZ: And then if you've got nothing to say  
4 on your motion, that's your right as well. So, Commissioners,  
5 I heard a motion on Issue 1, and --

6 COMMISSIONER DAVIDSON: Second.

7 COMMISSIONER JABER: And let me clarify. It would be  
8 my intent, Mr. Chairman, and you all tell me if it's not your  
9 preference, it would be my intent to allow participation on  
10 every issue, recognizing that some parties may not speak on  
11 every issue, but at least the flexibility would exist.

12 CHAIRMAN BAEZ: That's -- I think that should -- I  
13 could agree with that intent.

14 COMMISSIONER DAVIDSON: Second.

15 CHAIRMAN BAEZ: And there's a motion and a second.  
16 Commissioners, if you have no objection, we'll show Item --  
17 Issue 1 approved.

18 Issue Number 2, Mr. Deterding, you said you didn't  
19 have any -- you didn't want to provide oral argument on the  
20 issue.

21 MR. DETERDING: I'm just in support of the staff  
22 recommendation. That's all I had on that.

23 CHAIRMAN BAEZ: Very well. I think it, I think it  
24 fair at this point to let Dr. Kurien respond to nothing, if he  
25 so chooses, or at least comment on the recommendation.

1 Otherwise, we can go ahead, I think, and take a vote on Issue  
2 Number 2. Dr. Kurien.

3 COMMISSIONER JABER: If there are no specific  
4 comments to Issue 2, Mr. Chairman, for your convenience I can  
5 make a motion.

6 CHAIRMAN BAEZ: Okay. Well, Dr. Kurien. Dr. Kurien  
7 --

8 DR. KURIEN: Yes.

9 CHAIRMAN BAEZ: -- I just want to remind you, before  
10 we get, and this goes for everyone, before we get too far  
11 afield into, into issues which I'm sure are going to have  
12 plenty of discussion, I want to clear up for everyone, we are  
13 arguing -- this is a legal issue. It is on a motion -- it's on  
14 a motion to strike and it is on purely legal grounds. And I  
15 would ask you at this point, to the extent that you have  
16 comments on other issues, to reserve them to the appropriate  
17 time. We're going to try and get through the issues that we  
18 can quickly, as quickly as possible. And with that, you can go  
19 ahead and defend your motion, if you choose to.

20 DR. KURIEN: I have no comments on Issue 2  
21 specifically, but I'd like to address it preferably when we  
22 talk about Issue 3, if that's all right.

23 CHAIRMAN BAEZ: Well, that's, that's fine. And I  
24 think there will be a, there will be a time to do that. And  
25 you can -- Mr. Burgess, you can guide him through this, if you



1 would.

2 Issue 2, could we have a motion on Issue 2?

3 COMMISSIONER JABER: I can move staff on Issue 2.

4 CHAIRMAN BAEZ: Is there a second?

5 COMMISSIONER DEASON: Second.

6 CHAIRMAN BAEZ: And a second. All those in favor,

7 say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN BAEZ: Thank you, Commissioners.

10 Issue 3. Mr. Deterding, you had indicated previously

11 you had --

12 MR. DETERDING: I just have a couple of very brief

13 comments, not so much in the form of any kind of argument,

14 Commissioner.

15 CHAIRMAN BAEZ: Go ahead, sir.

16 MR. DETERDING: First of all, given the change in

17 circumstances that have occurred since this motion to dismiss

18 was filed and given the staff recommendation which we support,

19 I just wanted to note for the record that we, we do support the

20 staff recommendation and we do not wish to really provide any

21 oral argument further on that issue. I do, however, have a

22 concern that the language contained in the middle of Page 12

23 just after the reference to the, the statutes -- my Page 12, I

24 don't know if the same reference would be correct --

25 CHAIRMAN BAEZ: Mr. Deterding, I missed that

1 reference. Can you point me to that again?

2 MR. DETERDING: Yes. Page 12 in the middle just  
3 after the reference to the provisions of Chapter 367.121, the  
4 indented, just below that is a paragraph beginning "Moreover."

5 CHAIRMAN BAEZ: Yes.

6 MR. DETERDING: I believe that is an attempt to  
7 characterize the role of the CAC that is not a direct quote  
8 from the final order that established and set the purpose of  
9 the CAC and that, therefore, it is -- it should not be a part  
10 of, of any order by the Commission, unless it is the  
11 Commission's intent to revise the purposes of the CAC. And,  
12 therefore, I believe it should not be in there.

13 COMMISSIONER JABER: CAC, that's a new one.

14 CHAIRMAN BAEZ: You know, I was going to stay away  
15 from it but, you know, you brought it up.

16 COMMISSIONER JABER: It's an acronym. The acronym.

17 MR. DETERDING: Excuse me?

18 CHAIRMAN BAEZ: It reminds me of small children  
19 somehow. Not to worry, Mr. Deterding, I got your point.

20 MR. DETERDING: I apologize.

21 CHAIRMAN BAEZ: Question, Ms. Gervasi, is, and if you  
22 could please explain for us what the intent of that language is  
23 and to the extent that we can work it so that we keep the  
24 spirit and --

25 MS. GERVASI: Yes, sir. The intent was to try and

1 summarize what the order said was the role that the CAC would  
2 have. And it may be that we didn't summarize it as well as we  
3 could have, and I can go back and check the language of the  
4 order and more specifically tailor the phrase to, to track what  
5 the order intended the role to be.

6 CHAIRMAN BAEZ: Okay. And, and please don't for a  
7 second feel compelled to use the shorthand of the advisory  
8 committee. That was a joke also.

9 MS. GERVASI: Okay.

10 CHAIRMAN BAEZ: I guess I'm going to have to start  
11 giggling.

12 COMMISSIONER BRADLEY: Mr. Chairman.

13 CHAIRMAN BAEZ: You said, Ms. Gervasi, if you'd  
14 indulge me for a second, Commissioner, that there is language,  
15 there is language that you can work to try and reflect that  
16 what you were -- you're not trying to change the character of  
17 it but, in fact, be consistent with whatever participatory role  
18 the CAC was given?

19 MS. GERVASI: Yes, sir. And we'll, and we'll more  
20 closely tailor the wording to track the language of the rate  
21 case order that addressed the role of the CAC.

22 CHAIRMAN BAEZ: Commissioner Bradley, a question on  
23 that issue?

24 COMMISSIONER BRADLEY: Yes, just for a point of  
25 clarity. Is it Mr. -- and I need to ask Mr. Deterding this

1 question. Is it your concern that the role is not to monitor  
2 water treatment and water quality?

3 MR. DETERDING: Well, Commissioner, I believe that  
4 there -- we have some concerns with this wording because I  
5 believe that there was nothing in the order that suggested that  
6 the role of the CAC, Citizens Advisory Committee, excuse me,  
7 Commissioner, was to evaluate and monitor water treatment and  
8 water quality. I don't believe that wording was contained  
9 anywhere or anything similar to that to my knowledge was  
10 contained anywhere in the final order. I don't want to get  
11 into a controversy over the language. I just wanted to, to not  
12 try and change the purpose of the advisory committee through  
13 this order.

14 CHAIRMAN BAEZ: Well, and if, and if through, and if  
15 through the discussion with staff, and certainly your, your  
16 point being made, we can agree that the language isn't intended  
17 to expand anything that doesn't already exist. And I would,  
18 and I would, I would argue at some point that even that's  
19 subject to, to argument, but not, not for today. I don't think  
20 that anyone is trying to expand the parameters of the CAC's  
21 participation, certainly not at this point.

22 MR. DETERDING: Okay.

23 CHAIRMAN BAEZ: But I would, I would leave that to  
24 another discussion in the event that it ever happens. I don't  
25 think that's what's before us today. Ms. Gervasi has clarified

1 that there is, there is a way of more closely tailoring or  
2 better reflecting that that's not the case.

3 MR. DETERDING: That's fine.

4 CHAIRMAN BAEZ: Is that going to be satisfactory?

5 MR. DETERDING: Yes.

6 CHAIRMAN BAEZ: Does that satisfy your concerns?

7 MR. DETERDING: Yes.

8 CHAIRMAN BAEZ: Mr. Burgess, I don't want to leave  
9 you out of this conversation. I mean, the discussion that  
10 you've heard, I mean, is there anything that gives you  
11 heartburn?

12 MR. BURGESS: I want to make -- no, not anything I've  
13 heard. I want to make sure the proper time for entree on this.  
14 This deals with the whole deletion of territory and that sort  
15 of thing, but Issue 6 does as well. I don't know where you  
16 want to deal with the substance of it.

17 In addition, Senator Fasano's approach was to also  
18 deal with the question of deletion, and so I didn't know  
19 whether you wanted to go ahead and, and hear the comments that  
20 the senator has at this point or how you want to deal with  
21 that.

22 CHAIRMAN BAEZ: Well, Mr. Burgess, I just want to get  
23 through what I believe are just a few short concerns that  
24 Mr. Deterding is putting up. And I was fully intending on  
25 letting the senator come and address his concerns; if they

1 corresponded to Issue 3, obviously that's the appropriate time  
2 to do it. And I do recognize that there are concepts here that  
3 are sort of overlapping a bit, so I'm not -- we've got them,  
4 we've got them in line. If we can just get Mr. Deterding's at  
5 least language concerns out of the way.

6 MR. DETERDING: That is, that is the only concern I  
7 wanted to express, Commissioner.

8 CHAIRMAN BAEZ: Very well.

9 MR. DETERDING: And we did not want to present  
10 anything further on Issue 3 except to respond to any comments  
11 made by the other parties.

12 CHAIRMAN BAEZ: Thank you, Mr. Deterding.

13 Senator Fasano -- I also want to recognize  
14 Representative Fiorentino who is here now. Representative, if  
15 you'll forgive me for a moment the interruption, I have you  
16 addressing the item after this one. You're not here on the  
17 Aloha docket, are you? I just want to make sure, just Senator  
18 Fasano.

19 Okay. I'm sorry, Senator, for holding you up.  
20 Please have a seat, and welcome.

21 SENATOR FASANO: Thank you, Commissioners. And, Mr.  
22 Chairman, I appreciate you allowing me the opportunity to say a  
23 few words because, as you noted earlier, some of my comments  
24 not only deal with Issue 3 but also Issue 6, and this way I can  
25 just address them all here at one time.

1           As you can see, because of just by having the  
2 presence of Representative Fiorentino here today on another  
3 issue tells you the problems we have with utility, private  
4 utility companies in Pasco County.

5           Mr. Chairman and members of the Commission, again,  
6 thank you for the opportunity for allowing me to appear before  
7 you today. As this year marks the tenth year of my tenure as a  
8 state legislator, it also makes my tenth year of involvement in  
9 cases pertaining to Aloha Utilities. I don't know if that's a  
10 great anniversary or not, but it happens to coincide.

11           As you know, I'm not only the state senator who  
12 represents all of the Aloha Utilities servicing area in  
13 question, I'm personally a customer of Aloha Utilities. And I  
14 come before you to plead on behalf of the residents, my fellow  
15 customers and constituents who have worked so hard to bring  
16 this docket before you for your consideration today.

17           This past April a number of you attended public  
18 hearings held in New Port Richey to listen to the concerns of  
19 hundreds of Aloha's customers who filled the Pasco Board of  
20 County Commission meeting room. Your willingness to travel to  
21 Pasco was most appreciated and most reflective of the specific  
22 concerns of the people who have been saddled with Aloha  
23 Utilities in their only source of potable water. Today those  
24 very same customers will be ably represented by a contingent  
25 who have come to Tallahassee, and Dr. Kurien and Mr. Forehand

1 are here and they will speak to you. And I thank you for  
2 accommodating their travels as well.

3 I'll not repeat the testimony I gave in April which  
4 detailed a long history of Aloha's lack of concern regarding  
5 the poor quality of its product and its poor customer service  
6 program. My statements, Commissioners and Mr. Chairman, are a  
7 matter of record and can easily be reviewed by both you and the  
8 other Commissioners, if you wish. Instead, I intend to comment  
9 on the staff's recommendation before you today, and I'll keep  
10 it very brief.

11 I appear today not a legal expert, I'm not an  
12 attorney, nor as a chemist or an engineer who can speak about  
13 the merits of one treatment process or another. Instead, I  
14 come as an individual who has enough common sense to understand  
15 that a decade-long attempt to fix problems at Aloha Utilities  
16 has not been successful, and it truly has not. Yet in some  
17 rate cases we have been able to either reduce or receive a  
18 total denial of increases that Aloha has requested. But  
19 despite all of our best efforts, Aloha's customers still have  
20 to contend with the fact that black water is delivered to their  
21 homes.

22 Issue 3 before you today is an item of most concern  
23 to me. It is the essential point of the customers' petition to  
24 divorce themselves from Aloha Utilities. While I applaud the  
25 Commission staff for recognizing that the customers who brought



1 the petition before you have standing to do so, I'm very  
2 disappointed that a more forceful defense of their position was  
3 not communicated in the staff's recommendation you are now  
4 considering.

5           The staff has recommended in essence that the  
6 Commission does not have the jurisdiction to separate the  
7 petitioners from Aloha and order them to be served by Pasco  
8 County Utilities. While I cannot comment on a legal basis on  
9 this recommendation, from a common sense approach, however, I  
10 can only express my opposition to the recommendation.

11           First and foremost, Pasco County Utilities is the  
12 only water utility service that is adjacent to the Aloha Seven  
13 Springs servicing area. It is the only water servicing that is  
14 adjacent to Aloha. It has the infrastructure in place near the  
15 borders of Aloha's servicing delivery area to make such a  
16 hookup extremely feasible. To the best of my knowledge, there  
17 are no other utility companies either public or private that  
18 serve along the borders of Aloha Utilities in the petition  
19 area.

20           Secondly, I think it is highly shortsighted to  
21 recommend that the Commission does not have jurisdiction in  
22 this matter. While the legal experts must argue the merits of  
23 both sides of the issue, the Commission staff has not  
24 presented, has not presented a viable alternative to  
25 separation.

1           Yes, the next issue in the staff recommendation does  
2 address treatment options, but the petition, Commissioners and  
3 Mr. Chairman, was not originally filed to seek treatment  
4 options, but rather to ask this body to grant permission for  
5 them to move from one status as captive -- one status as a  
6 captive customers monopoly water utility to another more  
7 qualified provider of the single most essential product  
8 available on the market, and, of course, that's drinking water.

9           If the staff has affirmed that the customers do have  
10 standing to bring this petition before you, then the staff  
11 should have provided an alternative to merely stating that the  
12 Commission does not have the authority to order Pasco County  
13 Utilities to become the customers' provider of choice. If the  
14 Commission does indeed have authority to order a deletion as it  
15 inferred in Issue 6, then it should provide some sort of  
16 alternatives to the customers.

17           If Pasco County Utilities is the only utility that  
18 they can choose from and if Pasco County expresses an interest  
19 in becoming the utility of record, then I believe it is  
20 incumbent upon the Commissioners to consider that as a  
21 possibility in this proceeding.

22           Now I'd like to jump slightly ahead, but to remain  
23 consistent with this subject, I mention Issue 6 at this point.  
24 In this issue the staff recommendation should be noted for  
25 setting a time soon after February 12th, 2005, to revisit the

1 issue of the petition of territory. This date was set by  
2 previous rulings and mentioned prominently in Issue 4 as the  
3 date in which Aloha must implement a black water treatment  
4 program. While I believe the staff should be recognized for  
5 and at the very least allowing future consideration of the  
6 deletion petition, I believe that its recommendation is faulty  
7 for the simple reason of the form that formed the basis for  
8 Issue 4.

9           Moving to Issue 1 will not speak to the specifics of  
10 the request to alter the previously ordered removal of  
11 98 percent of hydrogen sulfide in Aloha's water. That is a  
12 point that I will let those with the scientific knowledge  
13 discuss today. Rather, I would like to, to point out my  
14 concern with any treatment process that Aloha embraces that was  
15 the result of Dr. Audrey Levine's efforts. It is well known  
16 that Dr. Levine has switched horses in midstream, so to speak,  
17 and has gone from being an independent auditor hired by the  
18 Office of Public Counsel, paid for with tax dollars, to being a  
19 consultant hired by Aloha to provide assistance for their  
20 treatment of choice, hydrogen peroxide. If Dr. Levine chooses  
21 to farm out her services and the services of her school, that  
22 is her choice. But to switch sides, especially to advocate a  
23 particular treatment program that does not, does not appear to  
24 have any documented success in the removal of hydrogen sulfide,  
25 is a blatant conflict of interest in my opinion. I would

1 suggest that anything, anything, Commissioners, Dr. Levine has  
2 presented and Aloha embraces should be looked at with both  
3 skepticism and a jaded eye.

4           While I agree that Aloha should be required to report  
5 frequently on its efforts to implement a treatment plan, I  
6 would like to bring to the Commission Aloha's frequent  
7 protestation -- in protesting that it was the hiring of Dr.  
8 Levine that prevented them from implementing a treatment plan  
9 thus far. At two recently held meetings between Aloha  
10 Utilities, the PSC staff customer representatives, at which my  
11 chief legislative assistant Greg Giordano was present, Aloha  
12 loudly and frequently blamed Dr. Levine's involvement as the  
13 reason the company did not proceed. At the same time, Aloha  
14 repeatedly stated its urgency that it must come into compliance  
15 with Tampa Bay Water's new standards which will become  
16 effective January 2005.

17           The hiring of Dr. Levine by the Office of Public  
18 Counsel should not have prevented Aloha from planning for the  
19 eventuality it knew was on the horizon, perhaps not the actual  
20 implementation. In any event, Aloha should have moved forward  
21 internally with plans to deal with a deadline it has known was  
22 on the horizon rather than wait a time when it became an  
23 emergency.

24           Aloha's subsequent embrace of Dr. Levine's finding  
25 also should be reviewed with some concern in light of the

1 conflict of interest concerns I expressed earlier.

2 In Issue 5, the staff recommendation presents  
3 possible options which has suggested that Aloha make rebates or  
4 low interest loans available to customers. And forgive me, but  
5 I have to laugh at that one. And those would be customers who  
6 wish to replumb or repair their homes due to the damage caused  
7 by the corrosion nature of hydrogen sulfide.

8 The basic premise at fault in this recommendation is  
9 that it is assumed that the customers must bear the  
10 responsibility for the bad water to deliver -- delivered to  
11 them in the first place. For years Aloha has refused to take  
12 the responsibility for black water and has resisted efforts to  
13 improve the water unless this body orders the customers to pay  
14 a cost of those improvements. Aloha, however, has found the  
15 money not only to hire Dr. Levine and their consultants, but to  
16 hire a public relations firm to help clean up its image.  
17 Additionally, Aloha found the money to hire a lobbyist during  
18 the legislative session to advocate for their position on  
19 pending legislation. Given all these new expenditures, as well  
20 as Aloha's continual refusal to drop its case against the  
21 customers whose money is still being held in escrow, my belief  
22 that Aloha continues to be driven by the dollar and the dollar  
23 only is strengthened. This is a point that should never be  
24 lost when making any decision regarding Aloha Utilities.

25 And as I prepare to close, again, I want to thank

1 you, all of you for your ongoing interest in the needs of  
2 Aloha's customers. I especially want to thank Commissioner  
3 Davidson particularly for his willingness to request that  
4 options, that options beyond a yea or a nay vote be presented  
5 regarding the customers' separation petition. While I  
6 appreciate that the staff recommendation has not entirely ruled  
7 out the possibility of deleting the area in question from  
8 Aloha's servicing area, I'm troubled that Aloha may implement  
9 at customers' expense an untried treatment process. Further,  
10 I'm greatly concerned that it is assumed that Aloha, after a  
11 decade of poor corporate citizenship, will suddenly be trusted  
12 not only to implement a treatment process it has championed,  
13 but to be expected to provide a level of customer service it  
14 has yet to provide. I have yet to receive a call from a  
15 constituent, and that is the honest truth. Thousands of calls  
16 that we've received over ten years, I have yet to receive one  
17 call from a constituent praising Aloha. Now even I get calls  
18 from people praising me, and that's few in those ten years.  
19 But I've yet to get one. And I ask the public -- I ask staff,  
20 I ask all of you, have any of you gotten a call from a  
21 customers praising Aloha in the last ten years or the time that  
22 you've sat as a commissioner? I haven't. And, of course, this  
23 is how I gauge success, and, and I would ask that each and  
24 every one of you do the same.

25 Commissioners and Chairman Baez, I thank you very

1 much for allowing me to go first and say a few words. God  
2 bless you.

3 CHAIRMAN BAEZ: Thank you, Senator.

4 Mr. Burgess, I don't know if you have comments.  
5 We're still on Issue 3. And to the extent that the customers  
6 that are here also have comments, if you would kindly, I guess,  
7 marshal them or be responsible for getting them up and showing  
8 them around. Thank you.

9 MR. BURGESS: Thank you, Mr. Chairman. My  
10 understanding is that Dr. Kurien did have comments that he  
11 would like to address to the Commission on Issue 3. I have  
12 none beyond that which you've heard.

13 CHAIRMAN BAEZ: Very well. Dr. Kurien.

14 DR. KURIEN: Yes. I am asking Mr. Forehand to  
15 distribute some material to you, which you would recognize is  
16 slightly out of sequence, but all the information that I have  
17 there is relevant to it. It also includes a copy of Dr.  
18 Levine's previous research on the hydrogen peroxide, which will  
19 be very relevant to what I'll have to say later.

20 As far as Issue 3 is concerned, the legal firm  
21 representing Aloha conceded on August 20th, 2002, during the  
22 consideration of Docket Number 020413 that the Commission may  
23 amend, suspend or revoke any certificate of authorization  
24 issued by it. Yet three weeks later, on September 8th, 2002;  
25 the same legal firm argued in relation to Docket 020896 that

1 the Commission does not have jurisdiction or authority. I find  
2 this double-talk very distressing; however, I'm pleased that  
3 the PSC staff recognizes the jurisdiction and authority of the  
4 Commission to delete territory in relation to the petition as  
5 made in the recommendation, if not now, soon after 12th of  
6 February, 2005. Thank you.

7 CHAIRMAN BAEZ: Thank you, Dr. Kurien.  
8 Commissioners, do you have questions? And I know that we may  
9 have gone slightly far afield, but we, we are still on Issue 3.

10 COMMISSIONER JABER: Is it your preference we go  
11 issue by issue, is that what you're trying to do or -- okay.

12 CHAIRMAN BAEZ: I think -- that's what I'm trying to  
13 do, unless --

14 COMMISSIONER DAVIDSON: We've voted on Issue 1 and 2,  
15 haven't we?

16 CHAIRMAN BAEZ: Yes, we have.

17 COMMISSIONER DAVIDSON: Okay. I had a question of  
18 legal on Issue 3. I just want to make sure that on this issue  
19 staff is confirming that we clearly have the jurisdiction to  
20 delete territory. The only issue that staff is basing its  
21 recommendation on is the very narrow issue that we don't  
22 specifically have jurisdiction over a county as a governmental  
23 authority to order that they take this.

24 MS. GERVASI: Yes, sir. That's exactly right. The  
25 Commission doesn't have jurisdiction to tell the county to take



1 Aloha's customers, and that's the only portion of the motions  
2 to dismiss that we're recommending should be granted.

3 CHAIRMAN BAEZ: Well, and can I, can I ask --  
4 Commissioner Deason had a question. I'm sorry. Are you all  
5 right? Okay. Go ahead, Commissioner.

6 COMMISSIONER DEASON: I understand the rather narrow  
7 scope of Issue 3, or at least I think I understand.

8 My question goes to your representation that we do  
9 not have the authority to order, in this case Pasco County, or  
10 any unreg -- any entity not regulated by this Commission to  
11 serve a particular area. The question that I have is has staff  
12 at this point, and maybe it's premature, has staff looked at  
13 other avenues that are available to us?

14 For example, I'd just throw this out: Does the  
15 Commission have the jurisdiction to delete territory contingent  
16 upon an action such as a government utility or some other  
17 entity coming forward and presenting a plan for serving a  
18 territory? Is that within our jurisdiction to consider that?  
19 Have we looked at the comprehensive plan of Pasco County? Do  
20 they have a provision that indicates that the, that the county,  
21 that Pasco County Utilities has the ability or the obligation  
22 or the intent to serve any territory not otherwise served? Has  
23 staff looked at some of these other potential options?

24 MS. GERVASI: Yes, sir, we, we have in the sense that  
25 we have met with both the Water Management District and county

1 officials. Both of them have told us that Pasco County is  
2 truly the only alternative water provider in that area.

3 I think you could perhaps make a ruling to delete  
4 contingent upon there being another provider out there willing  
5 and able to provide the service, but you would have to bear in  
6 mind that a decision to delete needs to be in the public  
7 interest, and certainly you wouldn't want to delete territory  
8 without knowing for sure that somebody is going to be serving  
9 the customers. And it appears to us that the county is the  
10 only alternative provider in the area.

11 CHAIRMAN BAEZ: But, Ms. Gervasi, if you'll forgive  
12 me, there's a piece of Commissioner Deason's question that I  
13 don't think you've reached, and that is to your knowledge is  
14 there, is there an affirmative obligation on the part of Pasco  
15 County Utilities to serve, sort of a provider of last resort,  
16 if you will, to coin a phrase?

17 MS. GERVASI: If Aloha were to abandon the  
18 facilities, then certainly there's express language in the  
19 statute that would require the county to take over the service.

20 CHAIRMAN BAEZ: Okay. You seem to be drawing a  
21 distinction. Can you flesh that out?

22 MS. GERVASI: The statute is specific to abandonment  
23 situations and requires that counties take over the service of  
24 privately held utilities that abandon the, the utility  
25 operations.

1 COMMISSIONER JABER: As receivers, right, Ms.  
2 Gervasi?

3 MS. GERVASI: Yes. Yes, ma'am.

4 CHAIRMAN BAEZ: Okay.

5 COMMISSIONER BRADLEY: Mr. Chairman, that deals with  
6 abandonment, not deletion. Is that -- or is it that narrowly  
7 defined?

8 MS. GERVASI: Yes, sir. It does specifically deal  
9 with abandonment.

10 CHAIRMAN BAEZ: But, but we're dealing -- and you are  
11 referring to a particular state statute that creates that, that  
12 obligation.

13 MS. GERVASI: Yes. It's in Chapter 367.

14 CHAIRMAN BAEZ: Okay. Now is there, is there a, is  
15 there a corresponding or a similar ordinance, for instance, a  
16 local ordinance or a county ordinance, that corresponds to that  
17 that creates an obligation on the part of Pasco Utilities in  
18 particular to be a service provider on what conditions, on what  
19 terms? See, because I see the distinction that you're drawing  
20 and which is, frankly, one of my fears. Assuming for  
21 argument's sake that, that on February 12th or 13th or 15th or  
22 35th deletion is a reality, the fear obviously is, well, what  
23 now? What have you done? Have you cut customers loose and  
24 with essentially no, no place to go?

25 And I think, if I read Commissioner Deason's question

1 correctly, I guess is the identification of some, some entity  
2 to fill the void. Naturally if Pasco is the only one that's  
3 been identified as the only, the only option, do they have  
4 affirmative obligations to serve, you know, beyond and  
5 different from whatever obligations the statute, the receiver  
6 statute establishes?

7 MS. GERVASI: And I don't know the answer to that  
8 question in terms of whether there's a local ordinance. I  
9 really don't know. The county has not told us that there is  
10 such an ordinance. I suppose that's possible. What the county  
11 did tell us though is that they are willing and able to provide  
12 the service to the Aloha customers if they have an order, a  
13 court order to do so. And the Commission does have the  
14 statutory authority to go to the circuit court and request an  
15 order. For example, if the Commission were to determine that  
16 deletion is in the best interest of the customers, knowing that  
17 Pasco County is willing to take the service but wants a court  
18 order, I think that the Commission could go to circuit court  
19 and request that the court issue such an order based on the  
20 Commission's deletion order.

21 CHAIRMAN BAEZ: Okay. Thank you.

22 COMMISSIONER BRADLEY: Yeah.

23 CHAIRMAN BAEZ: Commissioner Bradley and then  
24 Commissioner Davidson.

25 COMMISSIONER BRADLEY: You know, we're discussing the

1 issue of deletion versus abandonment. The statute basically  
2 covers abandonment.

3 MS. GERVASI: Yes, sir.

4 COMMISSIONER BRADLEY: I don't think I heard you give  
5 a specific answer to the issue of deletion or maybe I did, I  
6 think. But now if we delete -- maybe you did answer it. And  
7 let me see if I can paraphrase what you said. Okay. You said  
8 that if we delete, then we would have to -- if Pasco County  
9 does not agree to accept these customers, then we would have to  
10 get a court order in order to order them to accept these  
11 customers.

12 MS. GERVASI: I believe so, Commissioner. And from  
13 what the county is telling us, they are willing to serve the  
14 Aloha customers, but they would like to see a court order  
15 requiring them to do so. And I think that the Commission could  
16 petition the circuit court for such an order if the Commission  
17 finds that deletion is in the public interest.

18 CHAIRMAN BAEZ: Commissioner Davidson.

19 COMMISSIONER BRADLEY: And what would the time frame  
20 be in order to get such an, such an order?

21 MS. GERVASI: I think we would have to go to -- we  
22 would have to have a formal hearing first. And the reason I  
23 say that is I'm assuming that if there were a PAA order  
24 deleting any portion of territory, that there would be a  
25 protest and that the Commission might want to go directly to

1 hearing on that point first and get a final order after a full  
2 evidentiary hearing and then go from there.

3 CHAIRMAN BAEZ: Plus, plus any appeals --

4 MS. GERVASI: Yes, sir.

5 CHAIRMAN BAEZ: -- et cetera. Commissioner, suffice  
6 it to say it may be, it may be a while.

7 Commissioner Davidson, you had a question.

8 COMMISSIONER DAVIDSON: Thank you, Chairman. And I  
9 appreciate very much Commissioner Deason's question; it was a  
10 good one. I think there are paths to sort of get to, get to  
11 the point wherever we would want to be, and I think orders can  
12 be made contingent on certain occurrences and then you proceed  
13 I mean, obviously we want and the legislators want, the  
14 consumers want, everyone wants customers to be served. I mean  
15 no one is going to sort of get to a point where no one has  
16 service. So I think -- I really like Commissioner Deason's  
17 question and your sort of contingency response. That was a  
18 comment.

19 The question is have we had any cases at this  
20 Commission of constructive abandonment where due to year after  
21 year of poor service from a utility we have deemed a utility t  
22 have constructively abandoned service to the customers? I  
23 don't know if that theory is one that's ever been pursued at  
24 the Commission. Mr. Melson, maybe you know, or Ms. Gervasi.

25 MS. GERVASI: The concept is not alien to me. And

1 here may be a case or two where we may have deemed something  
2 to have been constructively abandoned, but I don't -- I can't  
3 tell you off, you know, the top of my head that that's true.

4 COMMISSIONER JABER: Commissioner Davidson, there was  
5 a -- see, you're making Chuck Hill get up.

6 There was a case way back when where this Commission,  
7 because of many, many complaints related to customer service --  
8 and I'm thinking Shady Oaks, Chuck, and you may want to  
9 elaborate on that. There were egregious actions on behalf of  
10 the company and this Commission initiated a revocation  
11 proceeding which had the effect of our going to the county and  
12 saying, you need to step in in a receivership situation. I  
13 can't recall if it was, if it was --

14 COMMISSIONER DAVIDSON: Water and sewer?

15 COMMISSIONER JABER: Oh, absolutely, a water case. I  
16 can't recall if it was something we called a constructive  
17 abandonment, but in effect it kicked in the abandonment  
18 statute. And it was Pasco County; I remember going to the  
19 county and asking them to take that on in a receivership  
20 situation. That's the closest I can think of.

21 MR. HILL: That is the closest. And we never have  
22 found constructive abandonment except for that one case. And  
23 we did seek a legislative change once to allow us to do that,  
24 and we were not successful with that.

25 COMMISSIONER JABER: Now I emphasize egregious,

1 Commissioner Davidson, for a reason: That case also had a  
2 history. And I remember also the process kicked in, as Ms.  
3 Gervasi appropriately pointed out, a separate hearing track  
4 where this Commission -- the burden was put on the Commission  
5 to issue a notice of revocation. And if I'm not mistaken, we  
6 bore some of the expense associated with the noticing and all  
7 of that. And after hearing, there was an order that was issued  
8 and that's what we took to the county. And if memory serves me  
9 correctly, I think that that was also appealed.

10 I know I'm looking at you because you're the only  
11 other one that would remember that.

12 COMMISSIONER DEASON: Your recollection is much  
13 better than mine, but I do recall the case. And, in fact, I  
14 remember traveling down to that particular hearing, if I'm not  
15 mistaken.

16 MS. GERVASI: I remember it, too. I traveled down  
17 there with you just to observe it. I was a new member on staff  
18 at the time.

19 CHAIRMAN JABER: Wasn't that your first hearing, Ms.  
20 Gervasi?

21 MS. GERVASI: It was, but I just -- as an observer.  
22 And we did --

23 CHAIRMAN BAEZ: It's old home week. I don't know.  
24 I'm sorry.

25 MS. GERVASI: We addressed that case in Attachment C



1 on Page 69.

2 CHAIRMAN BAEZ: Okay.

3 MS. GERVASI: And then with respect to the, to what  
4 Commissioner Jaber remembered about the Commission having to  
5 bear some of the expense of noticing, there's a provision in  
6 Chapter 367 that requires when the Commission initiates the  
7 action, that it be noticed. And in this case, since we have  
8 customers who have initiated the action by virtue of filing the  
9 deletion petitions, I think we're beyond the noticing.

10 CHAIRMAN BAEZ: And I just wanted to, for  
11 Commissioner Bradley's benefit, certainly my questions, and I  
12 feel my impression of how now these alternatives are starting  
13 to be discussed, certainly my questions were only aimed at  
14 trying to get some comfort over what the staff recommendation  
15 is suggesting is essentially a half step. It is a step in  
16 essence saying that we don't have, or some acknowledgment that  
17 we don't have jurisdiction to order a county government or a  
18 governmental entity to be a provider of service. And while  
19 that gives some pause for concern, to try and, to try and  
20 identify really what the day after would look like makes it,  
21 perhaps makes it a little easier to accept the limitation of,  
22 of the jurisdiction. With all due respect to the senator, I  
23 think we've also been doing this for your benefit as well.  
24 Senator, you were going to say something.

25 SENATOR FASANO: Thank you, Mr. Chairman. And I

1 think Dr. Kurien would, would also back me up on this. The,  
2 the county has and is willing to purchase -- well, the county  
3 has said and is willing to purchase Aloha Utilities.

4 CHAIRMAN BAEZ: And I don't think that that's --

5 SENATOR FASANO: And the reason why I say that is  
6 because I realize that you have to follow the statute as far as  
7 abandonment versus deletion. However, if, if there was an  
8 order that said there would be deletion if the county would  
9 take responsibility, I don't see anything -- I mean, I'm not an  
10 attorney. I don't know what -- if the county has already  
11 expressed several times that they are willing to take over this  
12 servicing area, in fact, they were willing to even purchase it  
13 at one time and was turned down by Aloha, or I won't say turned  
14 down, but there was no, not even any talks on it, but the  
15 county was willing to pursue it and, in fact, they say here,  
16 they're, you know, willing and able to pursue. And what I --  
17 then if you're saying you don't have the ability to do this  
18 because of statute that would then force the Pasco County to  
19 take it over because there's no other, then what's the purpose  
20 of waiting one full year to look at this again if the same  
21 statute is already in place? I mean, if a year from now it's  
22 found that still nothing has happened and the Commission is  
23 saying, well, we still have the same statute, what's the  
24 purpose of staff's recommendation of waiting a year? Right? I  
25 mean --

1           CHAIRMAN BAEZ: Does anybody want to take that? I  
2 can tell you, I can tell you what I think.

3           SENATOR FASANO: It sounds like a cop-out for staff.  
4 I mean, really. I mean, delay after delay after delay and  
5 another year has gone by and another year of dirty water and  
6 another year of poor service and another year of people unhappy  
7 with the servicing, with the service that they get from a  
8 utility company, and it's another year that, you know, that we  
9 have to put up with and coming back before you. **I mean, and**  
10 truly, Commissioners, the greatest thing that could ever happen  
11 here for this, for this, for this Public Service Commission is  
12 no longer to have to deal with Aloha.

13           CHAIRMAN BAEZ: Senator, you --

14           SENATOR FASANO: You don't have to answer that,  
15 Commissioner.

16           CHAIRMAN BAEZ: No, I know. No. But you did, but  
17 you did pose, you did pose a question. And at the risk of, at  
18 the risk of alienating my colleagues, I'll try and answer it at  
19 least from one person's perspective.

20           SENATOR FASANO: Yes. Thank you.

21           CHAIRMAN BAEZ: You asked the question of why are we,  
22 why are we back here? Why, why wait another year? And,  
23 Senator, just so that you can understand the --

24           SENATOR FASANO: But it's not only waiting another  
25 year, Mr. Chairman. It's why bother waiting another year if

1 the same answer is going to be again this time next year we  
2 don't have the authority?

3 CHAIRMAN BAEZ: And here's -- well, first of all, I  
4 think there's a distinction being drawn. I mean, this is --  
5 and I called it a legal half step. I think, I think the issue  
6 of us acknowledging what is plain, at least to me, that we,  
7 that we can, we cannot tell Pasco County, tell Pasco County.  
8 Okay. I think the discussion has, has migrated towards, well,  
9 what might Pasco County do? And you have perhaps a letter and  
10 certainly there have been statements and discussions with staff  
11 on Pasco County, but I don't see it as concerning that.

12 But you did ask a specific question: Why bother  
13 waiting another year? And the issue as I see it is with -- the  
14 answer is this. We issued a rate order that contained certain  
15 time lines, that contained -- that placed certain obligations  
16 upon the company, which at the time I thought were appropriate  
17 and I still do today, and I'll tell you why. Now the reason  
18 that we're still discussing things that haven't been done per  
19 that rate order over a year ago is -- what has happened is the  
20 process has happened to the frustration of all. I kid you not,  
21 to the frustration of all, and certainly this one sitting here.  
22 But we can't ignore what rights the law gives us. I would, I  
23 would hope we could all agree in that. And it doesn't, and it  
24 doesn't matter that we don't like the person that is availing,  
25 availing him or herself or itself of its rights, and that's

1 unfortunate because it creates these long and drawn out  
2 processes. But the fact still remains, Senator, that we have a  
3 standing order that, although it's been modified time wise  
4 because there have been, it's been held in abeyance pending,  
5 pending challenges in the court, which although inconvenient  
6 are legitimate, I hate to say almost, you know, that's why,  
7 that's why we have to bother, or at least I feel we have to  
8 bother waiting another year. Because what our  
9 responsibility -- as one Commissioner, what I see as our  
10 responsibility is to see that rate order through, to see the  
11 responsibilities that were created and the obligations that  
12 were created by our decision through to its, to its greatest  
13 extent until we can see it through no more. And in my opinion,  
14 because the process has been what it is, we haven't even gotten  
15 a chance to see it through. And I know that you don't like the  
16 answer because you have a different vantage point than I do,  
17 sir, and I do appreciate that. You have been at this for ten  
18 years; I have not, sadly. But that's, that's how I, that's how  
19 I see it. We have, we have to have some level of, of respect  
20 for, for the decisions that the Commission makes, and our  
21 responsibility is to try and see them through to their, to  
22 their maximum effect. That is what I see, that is what I see  
23 us as doing, and that is why I'm not, although I am frustrated,  
24 I am not uncomfortable with, with the time that it's taken.  
25 We've been trying to follow a process and trying to follow the

1     aws and sometimes that takes a while.

2             SENATOR FASANO:  And, Chairman Baez, and I appreciate  
3     that and truly appreciate all that you have to do.  However,  
4     when it comes across that a law or a statute is slowing the  
5     process down, I think it behooves the Commission to come -- you  
6     have, you have representatives come to the Legislature, tell us  
7     to get some statutes changed so it can move these things  
8     forward.  I mean --

9             CHAIRMAN BAEZ:  And even fortunately for us we have  
10    representatives like yourself that are actually actively  
11    involved in the process.  I mean, I think that the input comes  
12    from everywhere, and I do appreciate what you're saying.  There  
13    are obviously ways that we can make this process a lot better  
14    for everyone and a lot more definitive in a lot shorter time.

15            SENATOR FASANO:  And if I may, and I'll hopefully  
16    keep quiet after this.  On this particular issue though, I  
17    mean, look at the possibility of at least saying we can do  
18    deletion if something, if Pasco County is willing to take this  
19    servicing area over.

20            CHAIRMAN BAEZ:  Senator, and I think -- and I would  
21    say that I don't think that that possibility has been  
22    foreclosed.  And I don't think anything -- and certainly this  
23    issue of, this part of the recommendation or certainly the  
24    substance of this discussion has ever gone so far as to say  
25    since we cannot order Pasco County to be the service provider,

1 we cannot proceed with, with deletion. I don't think that  
2 answer has been made. I suspect it'll be a very argued point,  
3 mind you.

4 SENATOR FASANO: Absolutely. Understandable.  
5 Understandable.

6 CHAIRMAN BAEZ: But I don't think that, I don't think  
7 that that's what this recommendation, at least this part of the  
8 recommendation forecloses or sets in stone, so.

9 SENATOR FASANO: Thank you.

10 COMMISSIONER DAVIDSON: Mr. Chairman.

11 CHAIRMAN BAEZ: Commissioner Davidson.

12 COMMISSIONER DAVIDSON: Thank you, Chairman. I agree  
13 with Chairman Baez, and I think the last point is really one to  
14 emphasize. I mean, I'm right where he is on this issue. And  
15 if you sort of look back at all of the issues, I think we try  
16 and be strict constructionists and we simply can't tell a  
17 county what to do. We can't say you do this. It's not even  
18 the Commission that would be telling the county in an  
19 abandonment or constructive abandonment you must do it. It's  
20 you, the legislators, who have said that.

21 But Issue 3, I agree with the Chairman, is a narrow  
22 issue, and I think staff has clarified it to my satisfaction  
23 that we clearly have the authority to delete. And the very  
24 sort of discussion that was a result of Commissioner Deason's  
25 question, Ms. Gervasi's, yes, you perhaps could do something

contingent, the senator's comment, I think that's an issue that  
2 we will get to, a contentious one, but we'll get to it at Issue  
3 6.

4 So, Chairman, I'm where you are, I think, on this  
5 Issue 3. We just can't tell a county you must.

6 CHAIRMAN BAEZ: Commissioners, if you have any other  
7 questions or, if not, I'm ready to entertain a motion.

8 Commissioner Bradley.

9 COMMISSIONER BRADLEY: The county has expressed an  
10 interest in serving these customers, and this is a question of  
11 staff, is that correct?

12 MS. GERVASI: Commissioner, the county has stated  
13 that it's willing to serve these customers. They also told us  
14 that several years ago they approached Aloha, along with a lot  
15 of, if not all of the privately owned utilities in Pasco  
16 County, because they do have a regional system, and Aloha was  
17 not interested at that time in selling.

18 COMMISSIONER BRADLEY: And let me ask another  
19 question. As it relates to Aloha, are we talking about Aloha's  
20 entire system or just a small portion that's being contested  
21 and discussed?

22 MS. GERVASI: Aloha has two distinct service  
23 territories: Aloha Gardens is not a part of the deletion  
24 docket at all, and Seven Springs which is. The first of the  
25 two deletion petitions requests that all of Seven Springs'



1 territory be deleted.

2 Subsequent to that, we have received some information  
3 from the customers telling us that it's a portion of the Seven  
4 Springs area that they're asking to be deleted, perhaps maybe  
5 about a third of the territory. But because the recommendation  
6 doesn't address the merits of whether the Commission should  
7 delete, that's something that I think we can address in a  
8 subsequent recommendation.

9 COMMISSIONER BRADLEY: And one other question. Is it  
10 also in statute that the county has the authority to condemn  
11 and -- can they condemn?

12 MS. GERVASI: Yes, sir. There is a statute that  
13 allows for the county to exercise powers of eminent domain, as  
14 well as privately held utilities.

15 COMMISSIONER BRADLEY: Okay. Has the county  
16 expressed an interest in following that course of action?

17 MS. GERVASI: No, sir, they have not. They have  
18 advised us that they are not interested in exercising that  
19 power, that it is their policy to take over utilities that are  
20 willing to sell their facilities to the county.

21 COMMISSIONER BRADLEY: But not through condemnation.

22 MS. GERVASI: Correct.

23 COMMISSIONER DAVIDSON: Chairman, move staff on Issue

24 3

25 CHAIRMAN BAEZ: There's a motion. Is there a second?

1 COMMISSIONER DEASON: Second.

2 CHAIRMAN BAEZ: I'm sorry?

3 COMMISSIONER DEASON: I seconded the motion.

4 CHAIRMAN BAEZ: Thank you, Commissioner Deason.

5 There's a motion and second on Issue 3. All those in favor,  
6 say aye.

7 (Unanimous affirmative vote.)

8 DR. KURIEN: Mr. Chairman.

9 CHAIRMAN BAEZ: Dr. Kurien, I --

10 DR. KURIEN: May I just clarify the question about  
11 whether it's the entire Seven Springs area or not, because  
12 there seems to be some confusion about it?

13 CHAIRMAN BAEZ: Yes, you may. The vote stands on it.  
14 I don't know that it's going to make any difference. But if  
15 it's a question that's hanging out there, I think Ms. Gervasi  
16 addressed it for, for the Commissioner. If not, that's  
17 something that we can probably clear up in the interim.

18 DR. KURIEN: Because we submitted maps with it. When  
19 we used the word "Seven Springs," we submitted very defined  
20 area maps. So it's only part of Seven Springs.

21 CHAIRMAN BAEZ: Agreed, sir. I think Ms. Gervasi did  
22 point that out, but thank you for that clarification.

23 Commissioners, we are on Issue 4. Mr. Walden, I see  
24 you stepping up. Are you going to be taking, taking this  
25 issue?

1 MR. WALDEN: I think Ms. Gervasi gave the opening  
2 remarks we had on Issue 4. I'm mostly here to answer  
3 questions.

4 CHAIRMAN BAEZ: All right. And, well, the first, the  
5 first question is can you walk us through the recommendation  
6 and the changes that we received. I think for the benefit of  
7 the Commissioners it would be good if we could clear up exactly  
8 what differences we should be focusing on and what actually  
9 we're going to have in front of us. So if you could do that,  
10 please, Ms. Gervasi.

11 COMMISSIONER BRADLEY: Mr. Chairman, before we begin  
12 his discussion, I'd like to ask a question --

13 CHAIRMAN BAEZ: By all means.

14 COMMISSIONER BRADLEY: -- as it relates to Issue 4.

15 CHAIRMAN BAEZ: Go ahead, sir.

16 COMMISSIONER BRADLEY: Issue 4, as I read it, gets to  
17 the science of the issue, that is, the science that needs to be  
18 applied or should be applied maybe in order to clear up the black  
19 water; is that correct?

20 MR. WALDEN: It addresses more than that, but it  
21 certainly does talk about the treatment option.

22 COMMISSIONER BRADLEY: And what more does it address,  
23 just briefly?

24 MR. WALDEN: Well, it addresses the -- Aloha's,  
25 Aloha's motion in terms of changing the standard of how much

removal of hydrogen sulfide is to occur. So it's got some  
2 legal issues. But let me talk mostly about, about the  
3 treatment option. Certainly the focus here is for Aloha to do  
4 what it can to enhance the water quality and to diminish the  
5 incidence of black water as much as can be achieved.

6 The basis for the treatment option that we've talked  
7 about in the, in the recommendation is from the study performed  
8 by Dr. Levine where she spoke that the, in her opinion the, the  
9 best alternative was to use the hydrogen peroxide method, and  
10 she mentioned some of the reasons why. I can go into more  
11 detail, if you'd like. But --

12 COMMISSIONER BRADLEY: You don't have to. No. You  
13 said you could go into my more detail. Just brief.

14 MR. WALDEN: Yes, sir, I understand. I can move  
15 ahead into the, the changes that were made, if, if that would  
16 be the pleasure of the Commission.

17 COMMISSIONER BRADLEY: Okay.

18 CHAIRMAN BAEZ: Is that all right? Commissioner  
19 Bradley, did he answer your question?

20 COMMISSIONER BRADLEY: Yeah. Well, what I was going  
21 to ask -- my question ultimately was going to be this. If we  
22 agree to a specific means of treatment, does that then mean  
23 that Aloha does not have -- does that remove the responsibility  
24 from them if the treatment does not work?

25 MS. GERVASI: Well, let me take a stab at that

1 question.

2 COMMISSIONER BRADLEY: Does that give us the  
3 responsibility because we, because we made a decision that a  
4 specific type of treatment should be implemented? And I guess  
5 I have a what-if question.

6 MS. GERVASI: I don't believe that it would cause  
7 the, the Commission to have responsibility over the  
8 implementation of the treatment process. I think that the  
9 Commission has the authority to be very prescriptive and to  
10 require the company to implement a specific treatment process.  
11 But I, but I think it's important to bear in mind that if you  
12 do that, when the company comes back in for rate relief, one of  
13 the things that they have the burden to prove is the prudence  
14 of their decisions. And if the Commission makes that decision  
15 for the company, it just makes that prudence review all the  
16 easier for, all the more easy for Aloha to be able to, to show  
17 that they, that it was prudent for them to implement that.

18 CHAIRMAN BAEZ: And, Ms. Gervasi, would you clarify  
19 for me as well that, that nothing in this recommendation is  
20 actually, actually has the effect of choosing, making that  
21 choice for the company.

22 MS. GERVASI: Yes, sir. That's correct.

23 CHAIRMAN BAEZ: So then we're not -- I guess the  
24 decision or the question, as Commissioner Bradley put it, we  
25 are, in fact, not, not taking responsibility, as the

1 Commissioner put it, because that decision is not being made  
2 for the company essentially.

3 MS. GERVASI: Yes, sir. That's correct.

4 CHAIRMAN BAEZ: Okay. Thank you.

5 MS. GERVASI: That is our recommendation, that it  
6 should be a business decision to be made by the company, and  
7 then for the company to prove it, to prove the prudence of its  
8 decision when it wants rate relief later.

9 CHAIRMAN BAEZ: Commissioner Bradley, you had a  
10 follow-up? You're good?

11 COMMISSIONER BRADLEY: That gets to the heart of my  
12 concern.

13 CHAIRMAN BAEZ: All right. Mr. Walden, I had asked  
14 you if you could kind of highlight what the changes are and  
15 walk us through the, I guess, the modified recommendation so  
16 that all the Commissioners can have an appreciation for exactly  
17 where the changes are and what we're actually dealing with.  
18 I'd appreciate it. Thank you.

19 MR. WALDEN: Yes, sir. The original staff  
20 recommendation had suggested that the sampling and testing of  
21 water be taken out in the distribution system at the domestic  
22 meters or essentially the point of connection with the  
23 customers. We are now suggesting that the better thing to do  
24 or the correct thing to do is to do that sampling and testing  
25 as the water leaves the treatment plants that Aloha has. The

1 reason for that is -- well, let me stop right there. That's  
2 the first change.

3 The second change is that we want Aloha -- we're  
4 asking the Commission to order Aloha to provide comments to the  
5 staff concerning the feasibility of doing testing out in the  
6 distribution system at the customers' point of connection, at  
7 the domestic meters. Those are the two changes.

8 I can explain further why we made the change, if  
9 that's the pleasure of the Commission.

10 CHAIRMAN BAEZ: If you would, please.

11 MR. WALDEN: Concerning the point of collection and  
12 testing for sulfides and suggesting that the best place to do  
13 that is at the treatment plant, the outlet of the treatment  
14 plant of Aloha is because that is the area where Aloha has  
15 control over the product that's being produced. Aloha will be  
16 purchasing water from Pasco County and from Tampa Bay Water.  
17 There is -- today there is one connection point with Pasco  
18 County, and Aloha has used that as an emergency interconnect.  
19 But in 2005 there will be a second connection made at  
20 another -- at a point different from the current connection  
21 with the county, and it's my understanding in talking with the  
22 utility that the second connection that will be made will  
23 provide more -- will provide water that will be coming more  
24 from Tampa Bay Water than from Pasco County's water treatment  
25 plants.

1           The reason I make that specific distinction is Aloha  
2 will have no control over the water quality that comes from  
3 Pasco County or the water quality that comes from Tampa Bay  
4 Water. Now let's be clear that the water that comes from those  
5 two entities will have to meet DEP standards, EPA standards.  
6 But I think the real focus here is sulfides. Sulfides have  
7 caused a problem with Aloha's water; we all know that. The  
8 point is once the water is, from Pasco County and from Tampa  
9 Bay Water is introduced to Aloha's system, Aloha will not have  
10 an opportunity to treat it. Aloha can only treat the water  
11 that comes from its treatment plants.

12           Now Tampa Bay Water has a goal of, in terms of  
13 sulfides, not to exceed 0.1 milligrams per liter. Pasco County  
14 does not have that goal or, if they do, they've not shared that  
15 with us. Mostly what we understand is Pasco County is  
16 negotiating now an agreement, a contract to provide bulk  
17 service to Aloha, and it's our understanding that the county  
18 will not specify that parameter.

19           As I said, the county is going to meet all state and  
20 federal standards, but there is no standard for sulfide. So  
21 for that reason, because of the water purchase, the water that  
22 we expect to be purchased by Aloha from those other two  
23 sources, we believe the best place for Aloha to collect and  
24 test its samples is at the outlet of the water treatment  
25 plants.



1           CHAIRMAN BAEZ:  And just so I understand, that means  
2 the samples, the samples that Aloha would be taking and testing  
3 according to this plan, do they include, do they include Tampa  
4 Bay Water and Pasco County Water as well or they don't?  It is  
5 only for their own, their own water that they treat, is that --

6           MR. WALDEN:  It'll be, it'll be just for the water  
7 that they treat because it's going to be at the outlet of the  
8 water treatment plant.  And that's the, that's -- we're looking  
9 for compliance with, with the low, the low -- the 0.1 milligram  
10 per liter sulfide, and that's where we believe the sample  
11 should be taken.

12           CHAIRMAN BAEZ:  And how does that translate into  
13 some, some level of assurance or another that, that the  
14 ultimate problem, I guess the reason we're all here, is getting  
15 addressed adequately when, when, when you've at least  
16 identified or at least I heard one source of water, Pasco  
17 County Water, that doesn't necessarily have to be meeting that,  
18 that additional standard?  What kind of effect, what's the  
19 possible effect of including that, of having that water on the  
20 system addressing -- being able to address the sulfate or the  
21 sulfides?  I'm sorry.

22           MR. WALDEN:  I think that goes to the second  
23 modification that we made in this recommendation --

24           CHAIRMAN BAEZ:  Okay.

25           MR. WALDEN:  -- for some additional testing, and we

1 would like to hear from Aloha concerning the feasibility of  
2 doing some additional testing. It's my understanding that  
3 testing for sulfides -- hydrogen sulfide is a gas that's  
4 dissolved in water and the testing is more elaborate. That's  
5 not the right word. The collection is a different collection  
6 method, and you need someone who's very well versed in  
7 collecting water samples with dissolved gas. But, I mean,  
8 certainly it can be done, but we'd like to hear from Aloha  
9 concerning the feasibility.

10 COMMISSIONER BRADLEY: Mr. Chair.

11 CHAIRMAN BAEZ: Commissioner Bradley.

12 COMMISSIONER BRADLEY: You know, it would be my  
13 preference that Issue 4 be a business decision for Aloha. I  
14 think that the water -- I think that Aloha is in a better  
15 position to make the decision as it relates to what needs to be  
16 done in order to eliminate black water scientifically. Also,  
17 they're in a better position to make some business decisions as  
18 it relates to combining their system with Tampa Bay Water and  
19 with Pasco's system, that they're going to purchase water from  
20 Tampa Bay Water and from the county. And then I think that the  
21 Commission then would be in a better -- would, would better  
22 serve the process by allowing Aloha to make that as a business  
23 decision, and then we can see how it all comes together in  
24 terms of the elimination of black water to these particular  
25 customers who have this situation within their homes. I just

1 think that if we give Aloha the latitude that it needs to have,  
2 I think that we will be in a better position to make a  
3 determination as to what extent Aloha has acted to correct this  
4 problem for these customers --

5 CHAIRMAN BAEZ: And I don't disagree with you,  
6 Commissioner. I think --

7 COMMISSIONER BRADLEY: -- who have been -- not been  
8 adequately served.

9 CHAIRMAN BAEZ: Yeah, I would agree with you. I  
10 think, if I heard correctly, some of the changes and the  
11 modifications that we're discussing now actually address how,  
12 now we're going to confirm that that improvement is taking  
13 place.

14 And, Mr. Walden, I don't want to put words in your  
15 mouth. I want to make sure that I have it, that I have what  
16 you've explained correctly. It's not so much, it's not so  
17 much, Commissioner, the ultimate decision of what kind of, I  
18 mean, going back to an earlier discussion, what kind of method  
19 is the right one, what kind of method is the wrong one. That's  
20 not the decision, I don't think, we have before us, which is  
21 why I asked Ms. Gervasi that.

22 I think what Mr. Walden has cleared up for me at  
23 least is that the changes that we've been discussing or that  
24 have been described are, in fact, how you wind up monitoring  
25 whether that progress is, is moving along or not. Am I -- is

1     What fair, Mr. Walden?

2                   COMMISSIONER BRADLEY: Well, I think, just to respond  
3     to monitoring, I think that the end result is what  
4     determines -- is how we monitor what has been done in order to  
5     clear up the black water. If we allow them to have the  
6     latitude to make a business decision, which includes the  
7     science and other things that are necessary in order to  
8     eliminate the black water, when we see that the black water no  
9     longer exists, then we know that things are where they should  
10    be. If it still exists, then that means that, that then we  
11    need to exercise some other options that are available to us,  
12    assuming that the county is also now willing to pick up the  
13    aggrieved customers.

14                  CHAIRMAN BAEZ: Well, let's, let's put the question  
15    to staff. I mean, why, why -- if I understand what  
16    Commissioner Bradley is suggesting, why not have an, you know,  
17    an up or down approach? I guess at the end of the day either  
18    the black water exists or it doesn't. And why wouldn't, why  
19    wouldn't that be a correct, I don't know what to call it, a  
20    correct score, if you will?

21                  MS. GERVASI: Commissioner, I think that this  
22    issue -- the issue deals in large part with whether or not a  
23    98 percent removal of hydrogen sulfide standard should be  
24    changed, and that was a standard that was required by way of  
25    the rate case order. The company has come in and said that

1 they don't believe that standard is workable at all, but that  
2 they do believe that the Tampa Bay Water standard is workable  
3 and that they can achieve that standard and to measure that  
4 they are achieving that standard. And our recommendation is  
5 to -- the current recommendation is to, to grant that motion,  
6 allow them to do what they say that they can do, which is to  
7 achieve this level of hydrogen sulfide reduction, and to do  
8 that using the treatment that they believe is the most  
9 cost-effective way to do it.

10 COMMISSIONER BRADLEY: And I don't disagree with that  
11 as an approach. However, I think that a better approach would  
12 be to allow Aloha to make some business decisions and for them  
13 to bring the results of those decisions back to us, and then we  
14 can determine if the black water has been eliminated or if it  
15 still exists. I think that by us prescribing or agreeing with  
16 a scientific prescription that we don't know, we have no  
17 evidence of the fact that it, in fact, is going to work, I  
18 think that, I think that just is not a proper approach. I  
19 think we need to allow the company to make the business  
20 decisions, to make the scientific decisions, and for the, for  
21 the customers to, to come back and tell us within a prescribed  
22 time that, yes, we no longer have a black water problem or,  
23 yes, we do still have a black water problem, and then we can  
24 take the next appropriate action.

25 CHAIRMAN BAEZ: I think I understand what you're

1 asking, Commissioner. Is your concern, just so that I, just so  
2 that I can understand better, is your concern, because I know  
3 that you asked a good question before, is like what kind of  
4 responsibility do we have by ordering something and so on? Is  
5 that the same concern that you're expressing, that at some  
6 point that the Commission's agreement to accept one standard or  
7 another concerning the 98 percent or whether you do the Tampa  
8 Bay standard, that that somehow would relieve the company --  
9 that they could some day say, well, you know, you told us to do  
10 it or you told us that this standard was okay when, in fact, it  
11 didn't resolve anything?

12           COMMISSIONER BRADLEY: Either that, or the company  
13 could take the position that, you know, you prescribed it, it  
14 did not work. If you had given us the, the authority to apply  
15 the science and to make the business decisions that would have  
16 actually cleared up this problem, then we would not be still  
17 dealing with the problem that we've been dealing with for the  
18 last ten years.

19           I would like to have -- I would like to give the  
20 company the ability to make the scientific and the business  
21 decisions that need to be made in order to eliminate this  
22 problem.

23           CHAIRMAN BAEZ: And, staff, I mean, that's a  
24 legitimate question. I think if you can give the Commissioners  
25 some comfort that that, in fact, is the case or it isn't and

1 why shouldn't it be and what have you. I mean, I think it's  
2 fair to be comfortable with the fact that, you know, we either  
3 are or are not mandating certain things and the reasons  
4 therefore, and along those lines what our exposure or what the  
5 possibility is of having a failed process at the end of the day  
6 be insulated because we somehow ordered or prescribed  
7 something. I mean, if you can address that.

8 MS. GERVASI: I think that regardless of what the  
9 standard is and regardless of whether the Commission requires a  
10 particular standard or not, when the company comes in and  
11 requests rate relief for a treatment process, for the cost of a  
12 treatment process, they will bear the burden to prove the  
13 prudence of those costs so long as that is a business decision  
14 that's made by the company. If it's something that the  
15 Commission requires that the company implement specifically,  
16 then I think that the prudence of that is, is a foregone  
17 conclusion.

18 I think the court, the appeals court upheld the  
19 Commission's decision on the 98 percent removal standard so  
20 that I don't think there's any question that the Commission has  
21 the authority to, to prescribe a standard. But that's not to  
22 say that it's absolutely necessary that you do so.

23 COMMISSIONER BRADLEY: And, again, I'm only  
24 interested in, in clearing up this black water problem.

25 CHAIRMAN BAEZ: I think we all are, Commissioner.

1           COMMISSIONER BRADLEY: And I think that's a business  
2 decision that Aloha should make. And if it doesn't clear up,  
3 then we need to take a course of action. If it clears up, then  
4 this matter goes away.

5           CHAIRMAN BAEZ: Well, and let me, let me see if I can  
6 try and give you some comfort on it.

7           My understanding is that, that we are not prescribing  
8 anything that can come back to bite us if it fails. I mean, is  
9 that -- is -- I don't know how better -- I don't know how much simpler to  
10 put it. There is nothing that is going to give cover to the  
11 company in the event that this black water problem that we have  
12 ordered addressed doesn't get addressed. There is nothing that  
13 by this recommendation we are prescribing, in essence making a  
14 decision for the company, that we are later not going to be  
15 able to challenge the prudence of, of the investment so that  
16 we're not going to be all of the sudden blamed for having  
17 ordered something that didn't work.

18           COMMISSIONER BRADLEY: Yes. And, Mr. Chairman, to  
19 tag along with what I'm espousing, there's also the issue of  
20 the pipes, and we haven't discussed that.

21           CHAIRMAN BAEZ: Well, Issue 6, is it, 5 or 6.

22           MS. GERVASI: Issue 5.

23           CHAIRMAN BAEZ: Issue 5 or 6.

24           COMMISSIONER BRADLEY: Discusses the pipes? Okay.  
25 So we're going to wait until we get to 5.



1 CHAIRMAN BAEZ: Commissioners, any other questions?

2 COMMISSIONER JABER: Well, a reminder, Mr. Chairman.  
3 On Issue 4 we have not heard from the parties.

4 CHAIRMAN BAEZ: You're absolutely right. We've gone  
5 entirely too long and not had the parties -- Mr. Deterding, did  
6 you have some comment to make?

7 MR. DETERDING: Just, just briefly, Commissioner.  
8 The utility proposed to modify the requirements of a prior rate  
9 order in order to implement a hydrogen sulfide goal, the only  
10 hydrogen sulfide goal that we know of out there imposed on any  
11 company, and that is Tampa Bay Water's commitment to its member  
12 governments to meet a .1 milligram per liter of sulfides in the  
13 finished water as the water is delivered to those member  
14 governments and entered into their distribution systems. We  
15 felt that this was a much better standard. If a standard were  
16 to be imposed on this utility, it's one that's already out  
17 there for others in the area, and it's also one that, unlike  
18 the 98 percent removal that was in the original order, we think  
19 is, is more in line with the normal standards that DEP sets  
20 where they set a maximum level of something; whereas, the  
21 98 percent removal, I think all the parties agreed, had some  
22 real problems with, with implementation. And it -- in response  
23 to Commissioner Bradley's concerns, I think it almost  
24 prescribed a type of treatment that would have to be  
25 implemented to try and meet it; whereas, this standard leaves

1 that issue open to, to -- for the company to pursue in order to  
2 meet the standard.

3 We're in support of the staff recommendation with  
4 regard to this issue. Mr. David Porter, the utility's  
5 consulting engineer, is here to discuss the proposal contained  
6 within the, the staff recommendation as revised. He's prepared  
7 to address any of the concerns or the alternative proposals,  
8 but we will reserve that for any response to, to the other  
9 parties.

10 COMMISSIONER BRADLEY: Mr. Chairman.

11 CHAIRMAN BAEZ: Commissioner Bradley.

12 COMMISSIONER BRADLEY: Let me ask a what-if question  
13 to Mr. Deterding; let me present that to Mr. Deterding. What  
14 if it does not clear up the issue of black water? Then what,  
15 what would you recommend the Commission, this Commission's next  
16 action be?

17 MR. DETERDING: This proposal does not really  
18 address, Commissioner, the, the type of treatment or the  
19 treatments that the utility may implement to try to address  
20 black water per se. It deals with what we know to be one of  
21 the underlying constituents that, that affects black water or  
22 may contribute to black water.

23 So in addition to the standard that we're requesting  
24 or replace (phonetic) one that we do not believe is workable,  
25 and I believe even the Public Counsel's Office last July said

1 they didn't think was workable, we are also pursuing treatment  
2 options that are not just focused on meeting this .1 milligram  
3 per liter. They are focused on to address the issues related,  
4 other issues related to hydrogen sulfide: The odor, resulting  
5 odor issues and discoloration issues that do occur in some  
6 customers' homes.

7 So this is not -- not only does it not prescribe a  
8 treatment, but it does not -- it is not something that we are  
9 using as the basis for determining what we're going to do to  
10 try and address these issues. And we are working with the  
11 University of South Florida, Dr. Levine specifically, who was  
12 the independent auditor. We have enlisted her service because  
13 she's an expert in the area that she recommended the utility  
14 should pursue, and we are going to move quickly to try and  
15 address that with, with more than just meeting this standard.

16 COMMISSIONER BRADLEY: Okay. And, Mr. Deterding,  
17 what -- and I can appreciate it. You are looking at this from  
18 a legal perspective and I'm looking at it from a public policy  
19 perspective. I want the black water to disappear and I want  
20 Aloha to service these customers and for the county to go on  
21 about its business. But from a public policy perspective that  
22 is not going to occur if we in a few months have the same issue  
23 before us, the customers are saying that their water is still  
24 black and they still are unhappy with Aloha, and we still have  
25 not had an affirmative answer from the county as to are they

1 really making a commitment to serve these customers or is it  
2 just that they are paying lip service or being political about  
3 this issue. I want the black water to disappear and within a  
4 certain time frame, or I feel very strongly that this  
5 Commission has an obligation to, to do what the statute  
6 prescribes as it relates to our jurisdiction in these matters  
7 under -- on Page 12 that discusses Commission, powers of the  
8 Commission. So the black water needs to disappear. So how do  
9 we get there?

10 MR. DETERDING: Well, Commissioner, we're doing  
11 anything and everything we can to try and address that issue,  
12 and we are open to suggestions for, for any other experts out  
13 there who have information.

14 COMMISSIONER BRADLEY: That's why I made the  
15 suggestion that this should be a business decision that's made  
16 by Aloha. This should be a business decision, a scientific  
17 decision that's made by, that's made by Aloha so that the  
18 customers are happy and the Commission is no longer discussing  
19 this issue 12 years from now.

20 MR. DETERDING: And I believe that is the way it's  
21 being handled. We are trying to find the best methods for  
22 treatment to help with those problems.

23 COMMISSIONER DAVIDSON: Just real quickly. I had a  
24 similar concern that, Chairman Baez, you answered and a  
25 comment. And that is -- and I agree with you, Commissioner

1 Bradley. However it's done, somehow Aloha is not going to be  
2 relieved of its burden to deliver clean potable water to the  
3 premises; they will not. So however sort of they prove that  
4 and test that, that obligation remains, which I think is your  
5 concern from a policy standpoint. They have, they have to meet  
6 that. I can't remember when you said that, but it was on a  
7 previous issue and you had made the comment. These same types  
8 of questions were arising in my mind. Well, if they test at  
9 the treatment plant, does that alleviate somehow their burden?  
10 What if the water still shows up dirty? And I think the  
11 Chairman commented, no, they've still got this duty. So I  
12 don't know how that sort of relates to how we resolve this  
13 issue, but I'm comforted by the fact that they're not going to  
14 be, they're not going to be relieved of their obligations by  
15 any -

16 COMMISSIONER BRADLEY: That gives me, that gives me  
17 some comfort, your statement does, Commissioner Davidson.

18 CHAIRMAN BAEZ: Mr. -- Senator, if you can hold on.  
19 Mr. Deterding, were you done with your --

20 MR. DETERDING: Yes.

21 CHAIRMAN BAEZ: Okay. I'm sorry, Senator. Go ahead.

22 SENATOR FASANO: Thank you. And maybe staff could,  
23 could answer this. And, again, excuse my not being expert in  
24 this area.

25 What staff is recommending to be, to be implemented,

1 is there going to be a cost, and what will that cost be to the  
2 customers?

3 CHAIRMAN BAEZ: Mr. Walden?

4 MR. WALDEN: The information we have was provided to  
5 the staff in a data request from the company. And let me see  
6 if I -- I believe it's in the neighbor -- the overall cost is  
7 in the neighborhood of \$4 million capital cost.

8 CHAIRMAN BAEZ: I want to make sure, I want to make  
9 sure it's Mr. Fasano's question.

10 SENATOR FASANO: That's my question.

11 CHAIRMAN BAEZ: Are you talking about total costs,  
12 overall costs?

13 SENATOR FASANO: And, Mr. Chairman, forgive me, and  
14 forgive me for laughing, but this issue is deeper than, you  
15 know, than what appears to be on the surface. I mean, if  
16 you -- and correct me again if I'm wrong because, again, I'm  
17 just here as a customer as well as a senator, but if what the  
18 staff is recommending and you, and you approve this, Aloha is  
19 going to come back and ask for a \$4 million increase on its  
20 customers. Is that -- am I correct on that?

21 CHAIRMAN BAEZ: There, there would be an opportunity  
22 for cost recovery at some point in the future, yes. And I can  
23 only assume that would be the company's intent.

24 SENATOR FASANO: And, Commissioner, Mr. Chairman and  
25 Commissioners, and we don't even know if this will actually

1 solve the problem or not. I mean, there's no proof, there's no  
2 guarantee that we're going to solve this problem.

3 CHAIRMAN BAEZ: Well, you know, and I hadn't wanted  
4 to get into this comment. I, I hear what you're saying.

5 SENATOR FASANO: It wasn't our idea to join these  
6 dockets together. I don't -- I think today's, today's issue,  
7 if I'm not mistaken, and, of course, I said it in the beginning  
8 of my comments, it was really about the deletion.

9 CHAIRMAN BAEZ: Uh-huh. Well, I think they're --

10 SENATOR FASANO: And now all of the sudden we're  
11 dealing with a possible \$4 million rate increase.

12 CHAIRMAN BAEZ: Well, the deletion, the deletion --

13 SENATOR FASANO: Has nothing to do with this.

14 CHAIRMAN BAEZ: Well, I, I, I would beg to differ  
15 because if we've got a rate order, if we got a rate order that  
16 maintains the service in a certain -- if we've got a rate order  
17 that needs following and needs compliance with, if you will,  
18 notwithstanding the process that I had discussed before, if  
19 we've got a rate order out there that has to be observed and  
20 complied with by the company, as is their obligation to do, and  
21 you have a deletion in the middle, I think, I think the two are  
22 inextricably linked. Because how am I going to delete  
23 something based on, based on a company not fulfilling their  
24 obligations under a rate order if the opportunity to comply  
25 with a rate order hasn't been, hasn't been afforded for one

1 reason or another? And I think that -- I may not even disagree  
2 with you that it's taking too long. But I guess you see, you  
3 see the dilemma, you see the dilemma at least that I have.

4           SENATOR FASANO: With all due respect, Commissioner,  
5 you see the dilemma that I and the customers back in the Seven  
6 Springs are facing. If, if staff's recommendation goes  
7 through, the potential of them getting hit with a \$4 million  
8 rate increase is a possible, and I think that's a major issue  
9 here.

10           COMMISSIONER JABER: May I interject a comment, Mr.  
11 Chairman?

12           CHAIRMAN BAEZ: Absolutely. Interject away.

13           COMMISSIONER JABER: I've sat here quietly and a lot  
14 of that is because I have a fundamental concern with the  
15 direction we might be headed as well, and Senator Fasano sort  
16 of drove my concern home. But, Senator Fasano and Public  
17 Counsel and customers, with the highest respect to all of you,  
18 and you know that I have a deep respect for all of you involved  
19 in this process, this was precisely the concern I had two years  
20 ago when the whole notion of the Levine report was presented as  
21 an idea. And you may recall I said, let's stay on the track  
22 we're on, let's get this order complied with, let's determine  
23 what the outcome.

24           So I listened quietly as someone, I think it was you,  
25 Mr. Chairman, that said, you know, to the degree there's a



1 delay, it might be because of the statutes that we operate  
2 under. The delay comes from the track we took back when we  
3 were talking about the report. What's done is done. I don't  
4 pass judgment on it, but it does bring back the concern I had.

5 The fundamental problem I have as we sit here today  
6 is I go back to what we are calling the rate order. It was not  
7 a rate order. We denied a rate increase until this company  
8 would make the changes, as Commissioner Bradley said, on their  
9 own from a business standpoint, changes that we would react to  
10 after the fact. But this utility time and time again comes  
11 here and says give us the money and then we'll make the  
12 changes. So I find our -- I think that we are digressing from  
13 where we were. Be that as it may, we are at a different place  
14 now, Senator Fasano, and the report is out.

15 And I take to heart something the Chairman said the  
16 last time we met and I participated by phone, when you said  
17 these are opportunities for new beginnings and it's time for  
18 all of us to think out of the box. And I take your direction  
19 well and I am prepared to think of the new opportunities that  
20 this brings.

21 I can go along with the will of the majority here if  
22 we are clear that this is not a rubber stamp on future rate  
23 increases. This is looking for a way to implement the intent  
24 of the original order, which is fix the problem, and then we'll  
25 cross the expense of it when we get to it. But, you know,

1 Senator Fasano, I've been involved with this process ten years  
2 now. Unlike Chairman Baez, I have ten years' worth of  
3 knowledge here. And we sit here time and time again and talk  
4 about the appropriate treatment. We will eventually have to  
5 get to the expense of it. I would much rather deal with the  
6 treatment before we start talking about the expense.

7 CHAIRMAN BAEZ: I would, I would agree with you. I  
8 mean --

9 SENATOR FASANO: And, Commissioner, if I may, you're  
10 absolutely correct. However, the black water problem didn't  
11 arise overnight.

12 CHAIRMAN JABER: I agree.

13 SENATOR FASANO: When I first got elected in 1994 is  
14 when it was brought to my attention that there was black water.  
15 And Aloha denied there was black water to me and to this  
16 Commission more than once.

17 COMMISSIONER JABER: Agree.

18 SENATOR FASANO: All they asked for and all the  
19 customers in the Seven Springs area asked for was clean water,  
20 and no one, no one, including your own staff kept saying --  
21 well, they kept saying there was not a problem, first of all.  
22 And, in fact, they kept saying it was the copper piping for  
23 years.

24 I respectfully -- I understand what you just said.  
25 But please understand this: The delay is not on the part of

1 the customers and never has been. The delay has been on the  
2 side of Aloha Utilities that first denied there was a problem,  
3 fought us every step of the way, didn't bother to collect  
4 impact fees from, from homes that were being built, refuses to  
5 refund the escrow money that you ordered them to give back to  
6 the customers.

7           COMMISSIONER JABER: Senator Fasano, I agree with all  
8 of that. The purpose of my statement is we have to go back to  
9 the intent of that original order, which is let's fix the  
10 problem, let's look at in a future fashion what the expense  
11 might be. But my decision on fixing the problem is not bound  
12 or tied up in an expectation that they will get cost recovery.  
13 I don't think you and I are saying different things. I don't  
14 want to guarantee cost recovery because this Commission has  
15 mandated that the problem should be solved. I don't know how  
16 else to say that. That's the intent.

17           SENATOR FASANO: And I appreciate that.

18           COMMISSIONER JABER: We have gone away from that. I  
19 don't think anyone intended to, but --

20           SENATOR FASANO: And, Commissioner, it wasn't long  
21 ago that I pleaded with this, this body to increase the impact  
22 fees to the levels that the county was charging so Aloha would  
23 have the dollars to solve the problem, and we were ignored.  
24 So, I mean, we came here with solutions and ideas and  
25 suggestions and it never was implemented. So -- and I

1 understand, there's no question, I want the customers in the  
2 servicing area and my constituents to have clean water. But I  
3 don't believe that at the end -- and you made a very good  
4 point, that Aloha is going to have to prove themselves in  
5 solving this problem. I mean, Dr. Levine's recommendation,  
6 which I think is not credible any longer now that she's been  
7 hired by Aloha, which is laughable, has not even been proven  
8 anywhere else.

9 CHAIRMAN BAEZ: Senator, was it credible when she was  
10 working for -- I'm just curious. Was it credible when she was  
11 working -- and I haven't been part of it, so it's a, it's a  
12 legitimate question.

13 SENATOR FASANO: Mr. Chairman, you know, in the  
14 Legislature and the Public Service Commission, when we leave  
15 office, we're, we're not allowed to participate with those who  
16 we worked with for two years. Here you have a professor from  
17 the University of South Florida that was hired by the Public  
18 Counsel to come back with a recommendation, and within ten days  
19 after, after being relieved or leaving that position, she then  
20 gets hired on by the customer that the customers have been  
21 fighting for ten years. I mean, that there alone tells you  
22 there's something. You know, whether it's credible or not, the  
23 perception by 10,000 people in the customer servicing area is,  
24 one, that there's something wrong.

25 CHAIRMAN BAEZ: See, but I'm not interested in

1 perception. What I'm interested in is -- I asked a question.

2 SENATOR FASANO: Yes.

3 CHAIRMAN BAEZ: Was, was the -- was Dr. Levine's work  
4 credible when she was hired and accepted by the CAC?

5 SENATOR FASANO: I can't answer that question because  
6 I'm not an expert.

7 CHAIRMAN BAEZ: Well, then who can? I don't know.  
8 Dr. Kurien, you seem to have a fair bit of knowledge. I'm just  
9 curious.

10 COMMISSIONER BRADLEY: Mr. Chairman.

11 DR. KURIEN: May I answer that question?

12 COMMISSIONER BRADLEY: Before he answers that  
13 question, I'd like to get back to my initial proposal. Because  
14 in this discussion it's precisely the reason why I made the  
15 suggestion that this should be a business decision. And I  
16 think that if we make this a business decision on the part of  
17 Aloha, for sure they're going to be prudent in terms of the  
18 expenses that are incurred because they know that they have to  
19 come to this body in order to have those expenses approved.  
20 And I think that by us prescribing or even participating in the  
21 prescription for this solution at this point, I think that that  
22 gives us a different responsibility as it relates to their  
23 prudence.

24 CHAIRMAN BAEZ: And, Commissioner Bradley, I, I  
25 couldn't agree with you more. And I think, I think I tried to

1 elicit that same kind of assurance from the staff, and I, and I  
2 think Commissioner Davidson agreed, agreed with your concerns,  
3 and I think they've had them, they've had them met. But -- and  
4 perhaps we'll leave Dr. Levine's, because I realize that I'm  
5 guilty of putting this on a whole other track. But if we can  
6 get back to -- I'm sorry, Commissioners. It's out of a bit of  
7 frustration. But if we can put this, if we can put this back  
8 on, on track and --

9 COMMISSIONER JABER: Okay. I have a question to  
10 staff on Issue 4.

11 CHAIRMAN BAEZ: Commissioner Jaber, you had a  
12 question.

13 COMMISSIONER JABER: And because Senator Fasano did  
14 raise valid points that touched a nerve, one that I share, as  
15 it relates to expense. So clarify for me when you recommend  
16 and modify Issue 4, you are not modifying the part of the  
17 previous order that suggests to Aloha, make the improvements  
18 and come back and prove up your case, if you can, later on.  
19 This recommendation in and of itself does not contemplate a  
20 rate increase. Can you give me that comfort, please?

21 MS. GERVASI: Yes, ma'am. We can definitely do that.  
22 The intent is only to replace a 98 percent removal standard  
23 with something that is workable or that appears and hopefully  
24 is workable, and it has nothing to do with the rate recovery.  
25 That's something that will have to come in the future when the

1       ompany decides they want to request it, and at that point in  
2       ime it will need to be addressed.

3               COMMISSIONER DAVIDSON:  And I apologize if this is  
4       asic, but I just want to tie this discussion together for my  
5       own edification.  I've heard your response, Ms. Gervasi, to  
6       ommissioner Jaber's question that, no, this does not -- this  
7       will not necessitate a, sort of a rate, rate case.  We may  
8       adjust that, but recommendation for it is not going to mandate  
9       t.  The obligation is on the company to improve the water and  
10      rove their case, which hopefully provides some comfort to the  
11      senator.

12              Commissioner Bradley, as I was thinking about this,  
13      and then I have to give credit also to my aide Katrina, who  
14      came up and made a very valid point, and maybe this is where  
15      we've gotten, is that if the Commission sort of mandates a  
16      particular approach, then the argument is much stronger, well,  
17      we get to recover our costs for that because you told us to do  
18      it; whereas, if the Commission sort of endorses the general  
19      comment made by the Chairman that you have an obligation to  
20      meet your burden, the intent of the rate case, you have an  
21      obligation to meet your burden, then the obligation is on the  
22      company to establish prudence.  And they may spend millions of  
23      dollars and that expenditure is not prudent, but we haven't  
24      dictated it.  The moment we dictate it, it's a tougher case to  
25      say the expenditure wasn't prudent.

1           So on this recommendation are we dictating specific  
2 things that must be done or are we leaving it flexible enough  
3 so that the company can, as Commissioner Bradley said, exercise  
4 its business discretion, do what it thinks makes sense, and  
5 then it comes to us to test whether or not those expenditures  
6 were prudent?

7           MS. GERVASI: It's the latter. It's what you just  
8 said. It's the second thing. We are not recommending that the  
9 Commission prescribe the treatment methodology, but that Aloha  
10 be required to make a business decision about that. And if  
11 they want to get rate relief, they'll need to come in at a  
12 later time and prove, prove up that it was prudent for them to  
13 have done that.

14           COMMISSIONER DAVIDSON: Can we somehow make that  
15 clear? Can we somehow make that clear in the order, however  
16 that -- some type of language that shows, reflects the intent  
17 of the original order but doesn't -- all right. Sorry about  
18 that.

19           MS. GERVASI: Commissioner, Ms. Daniel just pointed  
20 out to me that at the bottom of Page 20 of the recommendation,  
21 this may satisfy it, and we can certainly make it more clear if  
22 it isn't as clear as it can be, that the Commission's -- it's  
23 at the very bottom of Page 20. That the Commission's  
24 involvement in the determination of which treatment alternative  
25 that Aloha implements should take the form of a prudency review



1 during the rate proceeding wherein Aloha requests and carries  
2 the burden to prove that the costs of the treatment process  
3 should be included in rates, and that this is the tool that the  
4 Commission now uses.

5 CHAIRMAN BAEZ: Dr. Kurien, I know that you want to  
6 make a statement, but Commissioner Deason did have a question.  
7 If you'll just hold on just a second.

8 COMMISSIONER DEASON: And I think the question that I  
9 have is probably going to be a good introduction for Dr. Kurien  
10 to finally present his statement, because I've been waiting to  
11 hear from him.

12 I just kind of wanted to reshift the focus. And it  
13 seems to me, and correct me if I'm wrong, Commissioners or  
14 staff, that what we have is a situation where there is an  
15 outstanding order that prescribes a certain result, that being  
16 the reduction of sulfides. The outstanding order prescribed a  
17 percentage threshold or percentage standard or goal, whatever  
18 you want to refer to it. We have in front of us a, a petition  
19 to change that, to change what is contained in an outstanding  
20 order that has been affirmed by a court of competent  
21 jurisdiction.

22 So I guess I have two questions. First of all, I  
23 really want to hear from Dr. Kurien and Public Counsel or  
24 whomever as to whether what is suggested here in terms of  
25 sulfide reduction, if it is appropriate. And then second of

1 all, the question that I have is legally how do we, sitting  
2 here today, change -- if there's disagreement, and I don't know  
3 what Dr. Kurien is going to tell us, but if he disagrees, if  
4 Public Counsel disagrees with what's being suggested here, how  
5 do we, outside of the confines or the proceeding of an  
6 evidentiary hearing where this 98 percent was, was, was  
7 determined, how do we, sitting here today, absent that, just  
8 with a wave of the wand or the bang of a gavel change what's  
9 contained in an outstanding order without giving everyone due  
process when it comes to changing that? So that's the question  
for legal. And then once they answer that, I certainly hope  
that we hear how the customers view this proposed change in an  
outstanding order.

14 MS. GERVASI: And, Commissioner, that legal question  
15 is addressed on Pages 19 and 20 of the recommendation where we  
16 recognize an order of the Florida Supreme Court on that point.  
17 And it concerns administrative finality of, of orders and that  
18 agencies must -- that orders of administrative agencies must  
19 eventually pass out of the agency's control and become final  
20 and no longer subject to modification. But the court continued  
21 by stating that there are differences between the functions of  
22 orders of courts and those of administrative agencies that have  
23 a continuing supervisory jurisdiction over the persons and  
24 activities involved and that there are occasions where changed  
25 circumstances would require --

1           COMMISSIONER DEASON:  You're missing -- I read that  
2 I understand that.

3           MS. GERVASI:  Oh, okay.

4           COMMISSIONER DEASON:  My question is -- I understand  
5 that we have some ongoing jurisdiction and some responsibility  
6 and that, and that we can retain our jurisdiction to a certain  
7 extent.  I don't have a problem with that.  My question is from  
8 a due process standpoint, how do we -- if there is  
9 disagreement, how do we give those that disagree with that the  
10 opportunity to have their day in court and, and maybe say that  
11 98 percent is the correct standard or, no, 0.1 milligrams per  
12 liter is not correct, it should be something else?

13           MS. GERVASI:  And that's exactly why Issue 4 is PAA  
14 It is a protestable issue.

15           COMMISSIONER DEASON:  I didn't see that in the  
16 recommendation, in the -- that Issue 4 is PAA.

17           MS. GERVASI:  On the very first page of the  
18 memorandum, proposed agency action.

19           COMMISSIONER DEASON:  Is this the revised memorandum?

20           MS. GERVASI:  No, sir.  This was as originally filed  
21 on the -- the line that begins with the word "Agenda,  
22 6-29-04 Regular Agenda," proposed agency action on Issue 4.

23           COMMISSIONER DEASON:  I'm sorry.  I don't, I don't  
24 see it.  I hate to be dense here.

25           MS. GERVASI:  It's on the first page of the

1 recommendation.

2 COMMISSIONER DEASON: I have the summaries  
3 Normally -- the normal procedure is that the summary sheet for  
4 the item, when each issue is listed, if it's PAA, it's  
5 indicated in the left margin that it's PAA, and I don't see  
6 that here.

7 MS. GERVASI: That one issue is the only issue that's  
8 PAA, so that one issue -- let me see on the agenda sheet if  
9 it's listed. It's probably --

10 COMMISSIONER DEASON: Okay. I see where it's listed  
11 now. Under agenda it is listed that Item 4 is proposed agency  
12 action. I apologize. Normally on the cover sheet, if it's a  
13 PAA issue, it is indicated on the cover sheet.

14 MS. GERVASI: I see.

15 COMMISSIONER DEASON: And I don't see it here. So  
16 your recommendation is to change that we would issue a PAA and  
17 then issue -- and have that protested and perhaps go to an  
18 evidentiary hearing on that.

19 MS. GERVASI: Yes, sir. That is our recommendation,  
20 that whatever the Commission's decision is with respect to  
21 Issue 4, that it be issued as a proposed agency action.

22 COMMISSIONER DEASON: Okay.

23 CHAIRMAN BAEZ: Are you okay, Commissioner Deason?  
24 Dr. Kurien, you've been waiting patiently. My apologies. Go  
25 ahead, sir.

1 MR. BURGESS: Commissioner, if I might, Dr. Kurien is  
2 going to address the substance of that issue. I did want to  
3 take I hope less than a minute to deal with a procedural  
4 complaint we have in this matter, and that is specifically the,  
5 the change and the recommendation and how it came about. What  
6 we have was initially a motion filed by Aloha to change an  
7 existing rate order. You had a response by OPC responding to  
8 that timely filed in which we incorporated a response by Dr.  
9 Kurien. From these two timely filed authorized motions and  
10 responses we had a staff recommendation that had a particular  
11 result.

12 Subsequent to that, Aloha filed a letter subsequent  
13 to the staff recommendation recommending certain changes to the  
14 staff recommendation. And we have had, we have -- Dr. Kurien  
15 e-mailed a response to that. My concern is that the -- and  
16 then that letter by Aloha resulted in a change to the staff  
17 recommendation which is now before the Commission, which has  
18 given us very little time to deal with and come up with a  
19 response.

20 What I'd like you to do is consider then Issue 2:  
21 Should the Commission grant Aloha's motion to strike the  
22 supplemental response by Dr. Kurien? The answer/staff  
23 recommendation, which you voted in favor of, is, yes, it should  
24 be stricken for two reasons. One is that it was outside the  
25 time limits and, second, that there's no provision in the rule

1 for a filing of this sort. I would suggest that the same  
2 applies to the letter by Aloha which has resulted in a shift in  
3 the staff recommendation that we have had little to no time to  
4 respond to. And, and that's -- I don't know quite what remedy  
5 I'm looking for, but my understanding has been that the  
6 Commission does not accept filings in response to staff  
7 recommendation.

8           And so, you know, if this is a shift in Commission  
9 procedure, it's something that I believe is new. And, and so,  
10 you know, I guess the only thing that I'd hope for is a change  
11 in the staff recommendation. But that cat's out of the bag,  
12 so, as I say, it doesn't leave me with much of a remedy to ask  
13 for. But I did want to bring that up as a complaint in  
14 procedure.

15           CHAIRMAN BAEZ: But I think you said something there  
16 that I'm not, I'm not clear is necessarily the case, and maybe  
17 we can just clear that up. We can take up the matter of, of  
18 Aloha's letter of filing in response to the recommendation in  
19 due course because I think it might bear some discussion as to  
20 the treatment of it. But before anybody jumps out of their  
21 chair, you've made an implication that that letter perhaps had  
22 something to do with, with the modifications of, of the  
23 recommendations, and I'm, I'm not sure if that's the case or  
24 not and I would like that cleared up on the record.

25           MR. DEVLIN: Mr. Chairman, not really. The

1 recommendation that we changed back to was the original  
2 recommendation. The recommendation filed June 17th really, as  
3 Ms. Daniel pointed out, had flaws in it. So we retreated to a  
4 recommendation that we're presenting today as a recommendation  
5 that we basically agreed to probably four or five days before a  
6 filing date.

7 CHAIRMAN BAEZ: Now -- and, and in particular as to  
8 the, as to the changes now that Mr. Burgess is discussing, was,  
9 was, was the Office of Public Counsel aware of what -- I guess  
10 was there agreement as to, as to the suggestions that were made  
11 in the, in the, in the original recommendation as pertains to  
12 these now recent changes? Am I --

13 MR. DEVLIN: I'm sorry, Mr. Chairman. I didn't  
14 follow that.

15 CHAIRMAN BAEZ: I'm bungling it up. I know. You're  
16 saying you retreated to a previous recommendation. Now I  
17 understand that that recommendation never became, was never  
18 filed, ergo, never became, never became public. But as to the,  
19 as to the particular, the two particular issues that, that you  
20 are retreating on, it's my understanding in essence that the  
21 balance of the recommendation remains the same. The two  
22 changes or these changes that become the issue of Mr. Burgess's  
23 comments here, was there -- are they the types of issues that  
24 may have been, that the parties may have been in agreement,  
25 that may have been the subject of conversations among all the

1 parties that there may have been some kind of agreement that a  
2 98 percent or that a monthly testing wasn't workable or that --  
3 now I'm running all the changes together, but do you, do you,  
4 do you understand my question?

5 MR. DEVLIN: We just -- hopefully this will be  
6 responsive to your question, Mr. Chairman. I believe that the  
7 recommendation that we're proffering this morning, there is  
8 agreement, at least it's my reading here, and I'll just read it  
9 verbatim. It's a letter from -- OPC told staff, I'm just  
10 reading this, OPC sent you a note about the customers having no  
11 objection to the PSC agreeing to a Tampa Bay Water standard of  
12 .1 milligram per -- for sulfides, liter sulfides. So we, we  
13 thought at that point there would be an agreement.

14 MR. BURGESS: I think -- maybe that -- I'd have to  
15 see the documents. I think that's a document that came out in  
16 response to the, to the motion by Aloha.

17 CHAIRMAN BAEZ: But it speaks --

18 MR. BURGESS: We qualified certain aspects of that  
19 earlier response. That's why I say -- you know, and then it  
20 was following that that the recommendation came out. Is that  
21 right?

22 COMMISSIONER JABER: Mr. Chairman, may I ask  
23 Mr. Burgess, I need you to clarify for me at this stage. It's  
24 gotten beyond me what your position is today on Issue 4. The  
25 original order had the 98 percent requirement.



1 MR. BURGESS: Yes.

2 COMMISSIONER JABER: Have you modified your position  
3 from accepting that requirement in the order? As we sit here  
4 today, what is your position on Issue 4?

5 MR. BURGESS: Okay. The position that we have on  
6 Issue 4 is that we do not object to Aloha's request that the  
7 98 percent removal standard be modified to some other standard.  
8 However, we disagree with Aloha on some of the specifics, and  
9 the staff recommendation on some of the specifics to which that  
10 would be changed to, and it's those specifics that Dr. Kurien  
11 was going to address.

12 COMMISSIONER JABER: Thank you, Mr. Burgess.

13 CHAIRMAN BAEZ: Meaning the so-called Tampa Bay Water  
14 standard is not something that you agreed to; is that --

15 MR. BURGESS: And the testing and the --

16 CHAIRMAN BAEZ: Well, just -- but strictly changing  
17 from a 98 percent removal to the Tampa Bay Water -- standard to  
18 standard, I understand that there's a separate, there's another  
19 issue in terms of the frequency and the location of the  
20 testing, but I guess your answer is it's okay to change from  
21 the 98, but we don't accept the .1?

22 MR. BURGESS: I think that it's an issue of context  
23 and interpretation, and it's those specifics that Dr. Kurien  
24 was going to address.

25 CHAIRMAN BAEZ: All right. And at long last, Dr.

1 Kurien.

2 DR. KURIEN: My first comment, if I can make it  
3 without offending anybody.

4 CHAIRMAN BAEZ: Dr. Kurien, you know what, I hate to  
5 do this to you, but I promise that it will pay off in the end.  
6 Unless your comments are short, are two or three minutes --

7 DR. KURIEN: No, it's longer than that.

8 CHAIRMAN BAEZ: I've got a bunch of angry  
9 Commissioners here and I need to live with them.

10 DR. KURIEN: Yes. Go ahead. Go ahead.

11 CHAIRMAN BAEZ: So let's take a five-minute break, if  
12 you don't mind. Thank you.

13 (Recess taken.)

14 CHAIRMAN BAEZ: We'll go back on the record. And,  
15 Dr. Kurien, I'm sorry to have cut you off for the umpteenth  
16 time, sir. I promise no more of that. You can go ahead now.

17 DR. KURIEN: Thank you very much, Commissioners. If  
18 I can say this without offending anybody here, I'd like to say  
19 that we all seem to be at cross purposes and that's why we  
20 cannot solve this issue.

21 As far as the customers are concerned, there are only  
22 three very simple issues: We want better quality water in our  
23 domestic plumbing; we want it at a cost that is reasonably  
24 comparable to what is available in our neighborhood; thirdly,  
25 that our utility must deal with problems of quality of water

1 with scientific methods. If we take those and allow Aloha to  
2 make a business decision as to whether Aloha is in a position  
3 to supply good, comparable quality water at reasonable cost to  
4 the customers, they can really answer the question as to  
5 whether they can do it now.

6 For the same reason, if the Public Service Commission  
7 were to say that we are going to make it possible for the  
8 customers to have good quality water at reasonable cost and we  
9 are not going to allow Aloha to pass on all costs of doing that  
10 to the customers and they must keep it within reasonable  
11 comparative value, then you can also probably answer the  
12 question fairly easily.

13 We provided our logical argument to show that we do  
14 not think that Aloha can provide it. It is up to Aloha to  
15 challenge us on that and show us that they can indeed provide  
16 good quality comparable water at comparable cost.

17 After having said that, I'd like to explain why the  
18 issues under Issue 4 is of concern to us. Back in July of 2003  
19 Aloha approached OPC to see whether the 98 percent order could  
20 be changed to a more practical one. The intent of the  
21 98 percent order was to provide water that was better in  
22 quality. Perhaps the Public Service Commission made a mistake  
23 in defining a particular solution in terms of what the standard  
24 should be. They should have simply said, provide comparable  
25 quality by whichever method you can. But after having said

1 that and after having it substantiated and supported by the  
2 DCA, now you have found yourself in a situation in which that's  
3 an impractical standard. And we agreed at that time with  
4 Aloha's request or, in fact, I was the one who suggested that  
5 it should be changed to the Tampa Bay Water standard of .1  
6 milligram of total sulfide; not hydrogen sulfide, total  
7 sulfide. That was for the reason that it was a comparable  
8 standard which Aloha had not specifically accepted even though  
9 on most occasions their water probably did not contain any more  
10 than .1 milligram of total sulfide, because I have tested it.

11           The reason why there has to be a need to change it  
12 slightly is because of the fact that at that time Aloha was  
13 considering installing either packed tower aeration or MIEX  
14 resin method, both of which remove hydrogen sulfide from water;  
15 whereas, the new method that they are proposing does not remove  
16 hydrogen sulfide from water but simply oxidizes it to sulfate.  
17 And that method has a problem, and that is why chlorination,  
18 which is an oxidated method, also had the problem, because FDEP  
19 recently recognized that if you use chlorine as the only method  
20 for processing water, you will end up with a certain amount of  
21 elemental sulfur which is associated in some manner, although  
22 we do not know exactly how, with the production of black water.  
23 And when we were recently approached to see if we would support  
24 Aloha's desire to have it changed to .1 milligram per liter, I  
25 wrote back and said, since the method that you're trying to use

1 is essentially the same as chlorination but with a little bit  
2 more oxygen, you will have a problem if you don't remove  
3 sulfide also from it. That's why I included the need to have  
4 sulfide, hydrogen sulfide ion and hydrogen sulfide itself  
5 included in that category of a standard. Because if you don't  
6 do that, the likelihood of their succeeding with this method  
7 becomes much smaller.

8           In fact, Dr. Levine herself in that article that I  
9 submitted to you shows that it is necessary to use  
10 microfiltration to remove sulfur that is formed by the addition  
11 of hydrogen peroxide to water. Now she recommends that it may  
12 be possible to do it without filtration by changing the pH of  
13 water, but that supposition has not been tested by anybody, and  
14 I am not sure that Dr. Levine herself has tested. Because I  
15 tried to contact her a few days ago and she hasn't replied  
16 to me because I wanted to see the data to see whether it is  
17 possible to convert to sulfate without formation of sulfur.  
18 Therefore, our concern and our desire to change this is related  
19 to the method that they have chosen and not as an absolute  
20 need.

21           Secondly, during the audit it was shown that when you  
22 use oxidated chlorination, because it's a reversible method,  
23 some of the sulfate or sulfur turns back into hydrogen sulfide  
24 in the distribution system, as was documented in the audit  
25 itself. That is the reason for saying that it is not enough to

1 have that standard. At the treatment plant that standard must  
2 be maintained as far as the meter because otherwise we may well  
3 get hydrogen sulfide delivered into the water, because during  
4 the transition from the treatment plant to the home, the  
5 reaction may reverse and cause production of hydrogen sulfide.  
6 If that is likely to happen, you will not solve the problem of  
7 black water. Therefore, there is a second reason to say  
8 specifically why the water must be tested at the point of  
9 delivery to the customer. In fact, Tampa Bay Water maintains  
10 that .1 level to the point of delivery to its customers. Those  
11 customers are obviously big customers, but they maintain it to  
12 the point of delivery. And that is the principle that I use to  
13 say that if you use this particular method, you must then  
14 maintain that standard as far as the domestic meter.

15           And the third suggestion that I made was that you  
16 should test it frequently. If you test it once a year, which  
17 is the recommendation of Aloha, you will find that with the  
18 fluctuating levels of hydrogen sulfide in the water of the  
19 different wells of Aloha, some day you may have the levels and  
20 some day you may not have it. Therefore, if you test it once a  
21 year, you're likely to miss a lot of times when the hydrogen  
22 sulfide level may be higher than the .1. Therefore, we'll be  
23 back arguing the same problem a year from now, two years from  
24 now and saying our method has not succeeded.

25           And that's why in a reply that I wrote recently to

1 Mr. Deterding's letter, I said, all monitoring is a function of  
2 the reason for monitoring. If you are monitoring to make sure  
3 that the method is being effective, you need to monitor it very  
4 frequently. I'm not for a moment suggesting that you should  
5 have a monthly monitoring at all -- at wells or at houses from  
6 all wells all the time. I'm saying during the time that you're  
7 going to test whether this method is effective, you must test a  
8 number of points very frequently to make sure that the method  
9 is successful. Otherwise, we'll end up in a situation in  
10 which -- I don't know if Aloha will say this or not, but this  
11 method was approved but it has not worked. So who is going to  
12 be responsible? Obviously, it's not going to be the customers  
13 because we will not recommend a method to Aloha. They are in  
14 the business of water processing. They should know what to do.  
15 The only reason why the customers got involved in it is because  
16 they said they were not responsible for the problem.

17           And let me disabuse both the Public Service  
18 Commission and Aloha of the notion that Aloha's responsibility  
19 ends at the meter. The corrosion rule, which is what black  
20 water is all about, specifically says that the test must be  
21 done in the homes at the faucets after six hours of stagnation  
22 of water. So Aloha cannot excuse itself of the responsibility  
23 of not testing water in the domestic situation. And I'm sure  
24 that Aloha says we do it once in three years. True, they do it  
25 once in three years. But if you're having a problem and

1 20 percent, if not more, of customers are complaining, you need  
2 to do it more frequently, and the point at which you need to do  
3 it is where black water is highest.

4 I suspect, though I cannot prove, and Aloha can  
5 answer it today, that Aloha does not test for copper in  
6 domestic homes in the areas where the frequency of water, black  
7 water is highest because they claim that they don't have to  
8 test it in those homes which have a point of use system, and  
9 that's correct. But there are lots of homes in those areas  
10 where black water is highest where they could be tested and  
11 perhaps tested more frequently.

12 I've done tests in my own home, five weeks in a  
13 period of about eight weeks. I had levels which are as high as  
14 2.9 and the water is still not black. It takes up to  
15 4 milligrams of copper sulfide to make the water black.  
16 Therefore, you cannot even depend on black water as a good  
17 signal that corrosion is too high. And federal law says that  
18 the water must not corrode copper pipes more than to a certain  
19 level because at that level it becomes an actionable level.  
20 And federal law does not say everybody must change their pipes  
21 to plastic. It says Aloha -- water utilities must make sure  
22 that the water chemistry is such that the corrosive nature of  
23 the water, which we all agree exists all the time, does not go  
24 beyond a certain level. And that's what we are asking for. If  
25 Aloha can do it within a reasonable time -- they've had ten



1 years to recognize this problem and take care of it, but they  
2 have decided to dodge it, to prevent scientific investigation  
3 of it. And what Dr. Levine said, even though she did not  
4 exactly identify the reason for saying it, was indeed that  
5 there should be an upgrading of method. And that conclusion  
6 would have come in 1996 if Piercy (phonetic) had said we're  
7 going to get an outside opinion about this. If Aloha had said  
8 while it is true that we obey or we conform to the federal  
9 rules as far as the meter, that we do not conform to it in the  
10 domestic plumbing or may not conform to it in the domestic  
11 plumbing where the highest incidence of black waters are  
12 occurring.

13           And today, if you would like, we'll read the letter  
14 from our presentation from Dr. Gaul, who has a Ph.D. in  
15 chemistry, severely concerned about the fact that this method  
16 that is being offered is not likely to succeed. And we do not  
17 want to waste \$5 million or \$4 million of our money to approach  
18 and try to pretend to effect a method which may not work. If  
19 Aloha wants to try that method and pay for it, it's up to them  
20 to do that. They have the business acumen and I'm sure -- and  
21 the business ability to make that decision. But I don't think  
22 the burden should be on the customers to find out whether this  
23 method will work or not because there are methods which at  
24 least to our lay mind looks like it works.

25           Pasco does not seem to have the same degree of black

1 water problem. And all we are asking for is to have a method  
2 which would significantly reduce black water. I know that  
3 black water cannot be completely eliminated, but it can be  
4 significantly reduced. But you have to choose a method that  
5 can do it. That method may be too expensive for Aloha to  
6 implement with the limited customer base that it has.  
7 Customers recognize that, and that's why we are asking to be  
8 given the permission to go to a utility that because of its  
9 wider base can supply it at lower cost to us. I don't think I  
10 need to say more. I think I have clarified myself very well.  
11 Thank you.

12 CHAIRMAN BAEZ: Thank you, Dr. Kurien.

13 Commissioners, questions of Dr. Kurien?

14 Mr. Burgess --

15 COMMISSIONER DEASON: I'm sorry. I do, I do have a  
16 question.

17 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

18 COMMISSIONER DEASON: Doctor, I'm sure you understand  
19 that we're here based upon a motion that was filed by Aloha to  
20 change a standard that was in a previous order of the  
21 Commission. I think you -- earlier in your presentation I  
22 think you recognized that the 98 percent requirement was  
23 impracticable.

24 DR. KURIEN: Yes.

25 COMMISSIONER DEASON: You endorse the 0.1 milligrams

1 per liter standard for total sulfides; correct?

2 DR. KURIEN: As long as the method that was being  
3 used was removing sulfur from water.

4 COMMISSIONER DEASON: Removing the sulfur, which was  
5 under two of the old previous types of treatment, the new  
6 proposal which just simply oxidates.

7 DR. KURIEN: Yes.

8 COMMISSIONER DEASON: Then that standard should not  
9 apply in that situation; is that correct?

10 DR. KURIEN: It may not help solve the problem.

11 COMMISSIONER DEASON: Well, let me ask you this  
12 question.

13 DR. KURIEN: Tampa Bay Water -- sorry.

14 COMMISSIONER DEASON: What do you -- how do you think  
15 this Commission should modify its previous order, if at all?

16 DR. KURIEN: If you are not going to prescribe a  
17 specific method, then it is appropriate to let Aloha make the  
18 decisions. But then you must couple it with a decision that  
19 you will not pay for a method if it fails because it's a  
20 **business decision**. And they should make that decision by  
21 taking good advice, scientific advice from those who know  
22 better.

23 COMMISSIONER DEASON: Okay. Let me ask you this  
24 question. Should then we simply reverse or remove the  
25 98 percent standard and then let Aloha make whatever decisions

1 they think appropriate to address the problem or should we be  
2 more specific?

3 DR. KURIEN: I think the danger of being specific is  
4 that you do not know or I do not know enough about what will do  
5 best depending upon the method that is used. I know that if  
6 you use oxidated method, because it will leave behind sulfur,  
7 and that is the only thing that we know of specifically as per  
8 the FDEP rule recently introduced that is associated with black  
9 water, it is possible that pH adjustment, which is one of the  
10 recommendations that Dr. Levine has made, may make some  
11 improvement. But it also has risks: It may cause water to  
12 turn white because of precipitation of calcium, and that will  
13 not be a solution for black water.

14 So it is essentially a decision that somebody who  
15 works closely with Aloha or Aloha, if it feels competent and  
16 confident about its own methodology and of its competence,  
17 wants to undertake. But then it must also take upon itself the  
18 burden of paying for that cost. **You cannot have it both ways.**  
19 And that is where I think Aloha was wrong in asking you to  
20 mandate aeration in 1998 because they were asking you to do  
21 something for which, I'm sorry to say, you don't have the  
22 competence to make that decision.

23 I think when we pass the buck to somebody else, it  
24 implies that you're not confident about it yourself. That's  
25 why you want somebody else to make the decision. I didn't have

1 that luxury as a physician. You make the decision, you stand  
2 by that decision. But I would not say to somebody, black water  
3 is not there or it's only one-tenth of one percent when their  
4 own documentation showed that it is 20 percent. And that's why  
5 I provided material facts to you about what Aloha has said,  
6 what Aloha presented evidence for in the hearing and said, look  
7 at this. And I'm somewhat upset by the fact that the Public  
8 Service Commission staff made recommendations without  
9 addressing those because they're very relevant to the question  
10 of whether Aloha can do what it claims it can do.

11 COMMISSIONER DEASON: Doctor, you may have answered  
12 the question and I'm just not capable of understanding, okay,  
13 and that's probably the case, but I'm going to ask the question  
14 again.

15 DR. KURIEN: Yes.

16 COMMISSIONER DEASON: And should the Commission  
17 change its order, the order requiring the 98 percent standard,  
18 should we change that?

19 DR. KURIEN: Yes, I think you should change it and  
20 accept the Tampa Bay Water standard.

21 COMMISSIONER DEASON: All right. We should change  
22 that. What should we change it to?

23 DR. KURIEN: The Tampa Bay Water standard of .1  
24 milligram of total sulfide.

25 COMMISSIONER DEASON: Okay.

1 DR. KURIEN: But you should also --

2 COMMISSIONER DEASON: And we should not take any --  
3 should we prescribe any more than that or should we leave it at  
4 that?

5 DR. KURIEN: I feel you should ask them -- if your  
6 intent is to reduce black water and that is the reason why you  
7 ordered the 98 percent removal, then you should also indicate  
8 what is appropriate for them to do. If they will do it on  
9 their own, fine. But past history suggests that they may not  
10 do it on their own. Okay. Let me not say a good water  
11 company. A conscientious water company, when customers  
12 complain about something for ten years, would have solved it  
13 long ago.

14 The PSC, and I'm going to be tough on you today, the  
15 PSC would have solved it without letting it drag on for ten  
16 years. Because you could have done it because it was easy to  
17 order an audit back in 1996 and find out what the reasons were  
18 because everybody else was updating their methods. Only Aloha  
19 held back because they claimed wrongly that it was enough for  
20 them to meet certain low standards. It was not enough. I  
21 realize that they probably did not have the money at that time  
22 to improve. But they should have come to you and said, look,  
23 we have a problem with our method. It does not produce water  
24 that the consumers can reliably depend on. We need money to  
25 change this. But they didn't do that, and that is where I

1 fault Aloha. I don't fault Aloha for anything else. They  
2 should have had the good sense to say everybody else is  
3 changing and there must be a good reason for their changing it.  
4 It's because the method, not Aloha, the method is weak. It  
5 cannot solve the problem that we are addressing. We need help.  
6 And if it was said in that way to the customers, I don't think  
7 there would have been one customer who would say I am satisfied  
8 with black water.

9 COMMISSIONER DEASON: Thank you.

10 DR. KURIEN: They were confused because they said --  
11 Aloha said it'll cost you -- we'll install aeration for you at  
12 398 percent increase in cost. You don't need it because your  
13 water is clean and safe. They were confused. PSC got  
14 confused.

15 What we really need is to address this as a  
16 scientific issue and decide who must pay for it. The customers  
17 can allow that increase only so far. I don't think they can  
18 allow it to go much beyond what is available in the  
19 neighborhood. If I pay \$1.71 for Pasco water as a customer  
20 today, I cannot be asked to pay \$3 for water 200 yards away.  
21 It doesn't make logic. So you have to address that. So you  
22 have to say to Aloha, yes, you go ahead and improve the water,  
23 but we're not going to let you increase the rates beyond a  
24 certain level. Do you think it's a business decision that you  
25 can do it? If Aloha think it's a business proposition, good

1 luck to them. But my observation is that they won't be able to  
2 do it.

3           If I were advising Aloha, and I'm sure they don't  
4 want me advising them, I would say to sit down, do  
5 calculations. And I have submitted some calculations to you to  
6 show that it is not possible for them to do it, and let me tell  
7 you why. If next year they need a million gallons of water  
8 from Pasco and Pasco will not sell it to them for less than  
9 \$2.96, that's the rate the PSC gave me, I'm not even using  
10 Aloha's figures, the PSC said it will cost \$2.96, Aloha will  
11 have to charge an additional administrative cost. So that  
12 water is going to cost over \$3 when it comes to the consumers  
13 when they can get the same water for \$1.71 from Pasco. Okay?  
14 And I've given the comparative figures, and that is assuming  
15 that there is no additional cost for the capital investment.  
16 They have said that it'll cost 44 percent more for the capital  
17 investment of \$4 million. Let me tell you, it will not stop at  
18 \$4 million because it does not include engineering costs, it  
19 does not include legal costs, it does not include  
20 infrastructure costs. So it is much more likely to be \$6  
21 million or \$7 million. So 44 percent is not, is not a  
22 realistic figure. If you add that 44 percent and the cost of  
23 bulk water from Pasco, the cost would be 50 percent higher than  
24 Pasco water. And I have submitted that to you and I have done  
25 it in very great detail so that you can have Aloha's people



1 check it. I'm very glad to have information brought to the  
2 floor, and that's what we have done. We have given you all the  
3 information that we have. And not congratulating the  
4 customers, we have done a superb job of providing you with  
5 information. Okay? And I'd like you to go through that very  
6 carefully, go through our material very carefully and make a  
7 decision that is fair, that's logical, and that's all we ask.

8           And the four simple principles that I've put forward  
9 holds very good. First, that there's a commitment to make a  
10 significant improvement in water quality. Secondly, that the  
11 water should not cost us more than a reasonable increase. It  
12 must be reasonably comparable to water, just like the quality  
13 That all problems that will arise, and I guarantee problems  
14 will arise when a new method is installed, has to be solved  
15 scientifically. You cannot go back to a legal standard and say  
16 we met a legal standard and that's where this .1 comes in. Set  
17 a legal standard.

18           COMMISSIONER JABER: Mr. Chairman, I have a --

19           DR. KURIEN: And the water when it goes from the  
20 treatment area to the house diverts itself, you'll have the  
21 problem still. Sorry.

22           CHAIRMAN BAEZ: Hold on, Dr. Kurien. Commissioner  
23 Jaber

24           COMMISSIONER JABER: I have a question, if  
25 Commissioner Deason's question has been answered.

1           CHAIRMAN BAEZ: Only if Commissioner Deason's  
2 question has been --

3           COMMISSIONER JABER: Well, I mean, if Commissioner  
4 Deason is --

5           COMMISSIONER DEASON: I think it's been more than  
6 answered, yes.

7           CHAIRMAN BAEZ: Thank you, Commissioner.

8           COMMISSIONER JABER: The question goes to Public  
9 Counsel and the company. Dr. Kurien raises the point with  
10 regard to the frequency of the testing, Mr. Deterding, and I  
11 notice in staff's modified recommendation they suggest that the  
12 samples should be taken at least annually. I hear Dr. Kurien  
13 suggest that, that that's not frequent enough. What --  
14 Mr. Deterding, do you have a recommendation? If we were  
15 inclined to make that testing occur more frequently, what would  
16 be your suggestion? And, Mr. Burgess, the same question of  
17 you.

18           MR. DETERDING: Well, a couple of things. First of  
19 all, and I'm going to have Mr. Porter here address the, the  
20 specifics of that, but generally speaking we proposed this  
21 standard and this testing regimen because we believed that it  
22 would be acceptable to all parties based upon prior  
23 conversations. It is exactly what the Tampa Bay Water standard  
24 is. They had addressed last summer, a year ago that they  
25 were -- believed that that was an appropriate standard,

1 starting point.

2 COMMISSIONER JABER: When you say testing standard,  
3 that addresses the frequency of the testing?

4 MR. DETERDING: Yes. Yes. The wording in the  
5 proposed language that we submitted and that the staff has  
6 adopted in its revised recommendation is verbatim -- well, I  
7 can't say verbatim. It's almost verbatim from the Tampa Bay  
8 Water agreement as to what the goal is for, for sulfide and for  
9 the frequency of the testing and how that will be determined.

10 COMMISSIONER JABER: Is there anything that would  
11 prevent you from testing quarterly perhaps?

12 MR. DETERDING: There's -- let me get Mr. Porter  
13 because I believe my understanding is that this, this  
14 changes -- the frequency may not change that, but it certainly  
15 takes us outside what the standard that we were trying to  
16 adopt, which was, one, the only other standard we know of in  
17 the area for, for sulfide testing. But I'll have Mr. Porter  
18 testify.

19 MR. PORTER: Okay. Thank you. When Aloha submitted  
20 its motion to change the standard from 98 percent to the new,  
21 to the new wording, it was anticipated that it would be the  
22 same as Tampa Bay Water's. So you'd have a .1 milligram per  
23 liter sulfide concentration, and also you would test annually.  
24 And that's important, especially for the first year, because  
25 when any new system is put on line, especially something this

1 complex, there's going to be a time period that it takes to  
2 shake out the new system or to fine-tune it. If the sampling  
3 frequency was more frequent than that, that would put an undue  
4 burden on this utility or any utility that builds such a  
5 complex system, especially seven of them, and tried to get them  
6 up and running and fine-tuned. If you look at how long it's  
7 taken for all the other utilities in that entire Tampa Bay area  
8 to get their systems optimized and fine-tuned, it's still  
9 continuing at this time, it's been two years or more, because  
10 this is a complex change. Not only are we changing how Aloha  
11 treats its water to control hydrogen sulfide, but we're also  
12 going to be treating or changing how we disinfect the water and  
13 a number of other parameters. And all of those have to happen  
14 concurrently.

15           When that occurs, it's going to take quite a bit of  
16 time to get that fine-tuned. Now we may find it may happen  
17 very quickly but, on the other hand, it may take a while, like  
18 it's taken everyone else. I just sat in a conference two weeks  
19 ago where the Tampa Bay Water group presented a large two-day  
20 seminar on what it's been doing over the last two or three  
21 years just to try to come up with ideas on how they might  
22 optimize the systems or how we might optimize the system when  
23 we take their water.

24           So all of those issues are related, and the fact is  
25 if we change the sampling frequency in here, then we're going

1 to have to also change the implementation time. You know, when  
2 would we be responsible for starting to come into compliance  
3 with the new rule? As Marty said, the reality is, however,  
4 that is the standard or the only standard for hydrogen sulfide  
5 anywhere, not only in the Tampa Bay area, but in Florida and  
6 anywhere else that I'm aware of. And it's a very, very strict  
7 standard .01 milligrams per liter of sulfide is not something  
8 to be taken lightly. It's a very difficult thing to do and  
9 it's going to take time.

10 COMMISSIONER JABER: Mr. Burgess, do you have an  
11 opinion on that?

12 MR. BURGESS: Yes. We continue to believe, as Dr.  
13 Kurien submitted in a, in a reply to the, to Mr. Deterding's  
14 letter, we continue to believe that monthly is, is the proper  
15 testing, proper testing increment.

16 Now Mr. Porter indicates that Tampa Bay Water's  
17 standard is an annual testing. Well, I think maybe that's fine  
18 for Tampa Bay Water. But Tampa Bay Water doesn't have the  
19 level of problem that Aloha has had historically, and that's  
20 exactly the point. It may be that a normal testing for blood  
21 testing is annually. But I take Lipitor, so in my situation I  
22 have to be tested more often. There are circumstances  
23 analogous. That is, they have shown problems and, therefore,  
24 the testing needs to be more frequent, and that's why we  
25 continue to suggest monthly as a better testing.

1           COMMISSIONER JABER: Recognizing whatever expense  
2 might be associated with that and a time element, Mr. Burgess,  
3 is testing quarterly a good compromise?

4           MR. BURGESS: I guess I, I would need -- your  
5 suggestion is something that's certainly worth considering. I  
6 guess I'd need more information. I don't know what the cost  
7 compromise would be, but, but I understand the direction you're  
8 heading and, and think it's worth considering.

9           MR. PORTER: Excuse me, Commissioner. If that were  
10 to be entertained by the Commissioners to go to quarterly, then  
11 another change will be necessary, and that will then be to say  
12 that Aloha should not be responsible for meeting this new  
13 standard, let's say, at least 12 months. Because you've got to  
14 give Aloha the same amount of time you would any other utility  
15 to bring that system into operation. It's going to take some  
16 time.

17           COMMISSIONER JABER: Mr. Porter, I'm going to give  
18 you an opportunity to explain that a little bit more thoroughly  
19 to me. Help me understand the nexus between the frequency of  
20 the testing and why you wouldn't be able to reach compliance.

21           MR. PORTER: Okay. Originally when we looked at this  
22 to submit it, the timing element was one year. So, therefore,  
23 the first time that Aloha would be responsible for testing to  
24 meet the requirement would be a year later, you see, and that  
25 would give us plenty of time to get the thing optimized. You

1 know, we're talking about seven plants with an entirely new  
2 process train. We're not talking about changing one little  
3 thing; we're talking about completely revamping everything  
4 Aloha does at each one of these plants.

5 COMMISSIONER JABER: So is your concern that at the  
6 end of the first quarter you would need to reach compliance by  
7 the second quarter?

8 MR. PORTER: Or whenever. That's right. And that  
9 just probably will not be possible. I mean, I think to be  
10 safe, if we're going to put a number in there --

11 COMMISSIONER JABER: But what if you tested each  
12 quarter but your, you still did not have to reach compliance  
13 until the original date that's articulated in the staff's  
14 recommendation?

15 MR. DETERDING: The rate -- the date that's  
16 articulated in the staff's recommendation is February of next  
17 year, which is really the date that we would put the systems  
18 online by.

19 COMMISSIONER JABER: I see.

20 MR. DETERDING: It is not the date by which we  
21 believe that we could be sure that we would be able to meet the  
22 standard. We felt that once we got the systems online, worked  
23 the bugs out, optimized them over the next year, and then from  
24 that point forward be able to meet the standard. And that's  
25 how we envisioned it.

1 MR. PORTER: That's just a realistic time.

2 COMMISSIONER JABER: And, staff, is that consistent  
3 with what your recommendation is? I appreciated the  
4 clarification that was made because I did not appreciate that  
5 fully in your recommendation.

6 MS. GERVASI: Yes, ma'am. The February deadline is  
7 the deadline by which the prior order contemplated that the  
8 treatment process would be implemented. And --

9 COMMISSIONER JABER: When the treatment process would  
10 be implemented, not necessarily when black water would be  
11 completely removed? Is that the reality of it?

12 MS. GERVASI: Right. It really doesn't contemplate  
13 how long it would take to optimize.

14 COMMISSIONER JABER: Okay. And, Mr. Walden, do you  
15 have an opinion on how -- the frequency of the testing?

16 MR. WALDEN: That's a tough question to answer. I  
17 think staff would like to see the testing more frequently than  
18 annually. The, the thing we were faced with was the revision  
19 of the order. We'd really like to have some more time to think  
20 about exactly what frequency we'd like to see. But I think I'm  
21 very comfortable saying we would like to see testing more  
22 frequently than just once a year.

23 CHAIRMAN BAEZ: Commissioners, any other questions?

24 COMMISSIONER JABER: I don't feel like I can make a  
25 motion. I'm very interested in hearing feedback from our



1 colleagues, Mr. Chairman.

2 I will tell you as we sit here and explore these -- I  
3 can be ready for a motion if another Commissioner wants to make  
4 one. Just talking out loud, it just seems to me that there's  
5 been a lot of misunderstanding with regard to what folks agree  
6 to or what their understanding was, and I find myself, while I  
7 can be prepared to vote, I find myself wondering if there's  
8 some room here to come back with a better understanding of what  
9 the consumers have agreed to or not agreed to, what they're  
10 willing to, what they're willing to see come back in a staff  
11 recommendation, what the company is prepared to do as it  
12 relates to the, the new standard. I'm talking out loud, Mr.  
13 Chairman. I'm prepared to --

14 COMMISSIONER DAVIDSON: As opposed to normally she  
15 talks silently to herself.

16 COMMISSIONER JABER: I know.

17 CHAIRMAN BAEZ: She talks to herself.

18 COMMISSIONER JABER: I do.

19 CHAIRMAN BAEZ: One thing, one thing that I'm not  
20 absolutely clear on. I know that we just got through talking  
21 about the frequency of testing. That doesn't to me suggest how  
22 close to the, how close or if there's any contemplation of the  
23 testing moving closer to the meter.

24 Now I understand that based on the revised  
25 recommendation that somehow that it's contemplated that Aloha

1 will comment on that or give, give staff some, some indication  
2 as to the feasibility. I'm assuming implied in that is that  
3 this Commission will be taking up that feasibility or having  
4 some kind of decision on that feasibility in, in due course.

5           Is it -- are you anticipating an up or down comment?  
6 I don't know how to say if, you know, yeah, it's feasible or,  
7 no, it's not feasible or it's feasible at this cost. There's a  
8 lot of permeations in there connected to frequency and where,  
9 where exactly -- you know, how often do you test, should you  
10 test, et cetera? I mean, are you all prepared to -- is there  
11 some guidance that we can offer the company or some  
12 clarification that you can offer the company as to where --  
13 what you might have in mind to receive? Because I'm not sure  
14 that that was necessarily fleshed out very well in the  
15 recommendation. I'm not sure, given -- I'm just not sure that  
16 we're going to get enough information, assuming, assuming the  
17 Commissioners will be amenable to placing that 60-day let's see  
18 period, that's there's any clarity in terms of what the company  
19 needs to address in terms of feasibility. Is that something  
20 worth working on? Is that something worth fleshing out?

21           MR. WALDEN: Commissioner, I think it is something  
22 worth working on. I have talked to Mr. Porter about testing  
23 more frequently than once a year. We didn't talk about how  
24 frequently: Should it be once a quarter, once a month, once a  
25 week?

1           My general understanding is that it will be expensive  
2 to do the testing because you need a technician who is familiar  
3 with collecting a water sample that has dissolved gas in it  
4 and, yeah, that the laboratory tests -- I'm not sure it  
5 requires a laboratory test. I believe it may be tested in the  
6 field. The point is there will be some expense involved. And  
7 it's more than just an ordinary test, for instance, testing for  
8 bacteriological contamination or chlorine concentration.

9           My point is that I don't know how much it's going to  
10 cost. I don't believe Mr. Porter knows exactly what it would  
11 cost and that's why --

12           CHAIRMAN BAEZ: But that's the kind of information  
13 that you're looking for?

14           MR. WALDEN: Yes, sir.

15           CHAIRMAN BAEZ: Mr. Porter, is there some -- and I'm  
16 assuming there's been some -- you agree that there's been some  
17 discussion with Mr. Walden? I mean, is it fair to ask you --

18           MR. PORTER: Yes.

19           CHAIRMAN BAEZ: -- do you have, do you have a pretty  
20 clear idea of what, not just a cost but certainly the different  
21 combinations of costs that might be available in order to  
22 provide, assuming this 60-day reporting, this 60-day comment on  
23 feasibility is adopted?

24           MR. PORTER: Okay. As to cost, what Mr. Walden and I  
25 spoke about the other day on that issue was what would we do if

1 we had to go out to the customers' meters and things likes  
2 that, and I think that would be rather expensive. And the  
3 reason for that would be we'd have to have a laboratory  
4 technician come from the laboratory, the commercial  
5 laboratory, bring their laboratory equipment with them and a  
6 technician, sample in the field, test in the field, and then go  
7 back to where they came from, which is rather expensive. The  
8 testing that could be set up potentially at the treatment  
9 plants, I mean, it may be possible to set that up there if we  
10 did it over time. And --

11 CHAIRMAN BAEZ: See, but testing, testing at the  
12 treatment plants is not part of the deal. I mean, that's  
13 already -- a testing of some frequency is already part of the  
14 requirement.

15 MR. PORTER: Right. Right. I understand.

16 CHAIRMAN BAEZ: That's not what I'm talking about and  
17 I don't think that's what -- if I have it correctly, I don't  
18 think that's what Mr. Walden is contemplating by the addition  
19 to this, to the recommendation. What's being contemplated is  
20 at the same time an addressing of the frequency issue as to  
21 whether --

22 MR. PORTER: You're talking about at the plants?

23 CHAIRMAN BAEZ: -- more than one a year -- are we  
24 talking at the plants?

25 MR. WALDEN: No, sir. We're talking about out in the

1 distribution system.

2 MR. PORTER: Right. I thought that's what you were  
3 talking about. See, that's going to be rather expensive.

4 CHAIRMAN BAEZ: I have no doubt but that you think  
5 it's going to be rather expensive and I've heard you say that  
6 several times, but that's not even what we're talking about  
7 now. We're talking about put the information together and  
8 offer it to staff.

9 MR. PORTER: Okay. Well, that 60 days, we're  
10 certainly going to address that. That's one of the things  
11 you've asked us to do.

12 CHAIRMAN BAEZ: But do you -- so then my question to  
13 you was do you have, do you have a complete idea of what it is  
14 that you're supposed to -- what it is that you would be  
15 supposed to submit to the staff for, for review?

16 MR. PORTER: Well, I think what the, what the rec  
17 says is that we -- well, here. Where is it? It says that  
18 Aloha shall be required to file comments within 60 days from  
19 the date of the Commission's vote on this item regarding  
20 feasibility of collecting and testing monthly samples. We can  
21 certainly do that within the 60-day period.

22 CHAIRMAN BAEZ: Okay. And you understand that that's  
23 at the meter, all those expensive things you say.

24 MR. PORTER: I know you're saying here at the meters.  
25 I understand that.

1           CHAIRMAN BAEZ: Okay. It's just that it seems, it  
2 seems to me that this may not be specific enough in terms of  
3 what, what kind of information you need, and I just want some  
4 kind of assurance or understanding that to the extent that you  
5 all have talked to each other, that you do understand what that  
6 means. That, Mr. Walden, if this, that if this requirement is  
7 adopted, Mr. Walden is not here expecting one thing and  
8 Mr. Porter is over there anticipating reporting on something  
9 else. And I --

10           MR. PORTER: Yeah. You know, what we just read, I  
11 think I understand what you want there.

12           MR. DEVLIN: Mr. Chairman, maybe this would help  
13 break this off dead center is we could gather, congregate and  
14 put together maybe a data request that would meet the spirit of  
15 the Commission vote and promise to get that out in the next day  
16 or two.

17           CHAIRMAN BAEZ: All right. Commissioners, any other,  
18 any other questions or a motion? I'm sorry, Mr. Forehand.

19           MR. FOREHAND: Before you go on, my name is Wayne  
20 Forehand, honorable Commissioners. I'm the chairman of the  
21 Citizens Advisory Committee. And there's been a message that  
22 I've been asked to bring forward and I think this is the  
23 appropriate time for it. I've cut it down somewhat because I  
24 understand this is going on. All I've got to say is that  
25 neither Aloha nor Dr. Levine has provided proof or technical

1 justification to substantiate the claim that this process will  
2 work.

3           Hydrogen peroxide is not used anywhere in the U.S.  
4 For the purposes being proposed by Aloha and Dr. Levine. Dr.  
5 Levine conducted an extensive study with Hillsborough County in  
6 '02 and '03 to investigate hydrogen peroxide oxidation coupled  
7 with microfiltration at ambient pHs. Microfiltration was  
8 required in order to remove the turbidity caused by the  
9 hydrogen peroxide oxidation products. Elemental sulfur formed  
10 under these conditions. This approach was found to be too  
11 expensive for Hillsborough County Utilities.

12           Dr. Levine proposed a solution to this problem that  
13 included raising the pH to 8 in order to reduce the formation  
14 of elemental sulfur and potentially eliminate the formation of  
15 turbidity.

16           And the need for microfiltration, this solution was  
17 also rejected by the technical staff of Hillsborough County  
18 Utilities as too risky since with a pH of 8 or above you run a  
19 substantial risk of precipitation of calcium hardness salts  
20 with all the attendant problems of scaling and fouling. The  
21 very capable and highly educated technical staff of  
22 Hillsborough County did not find the risk of Dr. Levine's  
23 proposal worth pursuing. Dr. Levine's research project on  
24 hydrogen peroxide came to a close.

25           Today Aloha, who does not have the highly technical,

1 highly qualified resident technical staff, has accepted this  
2 same proposal from Dr. Levine to conduct oxidation of hydrogen  
3 sulfide with a pH of 8 and above without microfiltration and is  
4 assuring customers that this is a solution to the black water  
5 problem. Dr. Levine's previously rejected research project  
6 will now apparently receive new funding at the expense of the  
7 Aloha customers.

8           Once again, neither Aloha nor Dr. Levine has provided  
9 any justification for their claim that this hydrogen peroxide  
10 chloramine process will solve the black water problem nor  
11 induce -- nor reduce problems of scaling and fouling that  
12 caused the experts of Hillsborough County Utilities to reject  
13 Dr. Levine's approach.

14           How can management oversight permit the  
15 unsubstantiated services of an Aloha engineer to outweigh the  
16 concerns of very educated, informed and concerned citizens who  
17 should have the right to primary consideration in this matter?  
18 Citizens cannot stop the PSC from permitting this to go forward  
19 over our objections. We understand that. However, we can ask  
20 that Aloha be compelled to provide substantiated evidence of  
21 its claim that their process will solve the black water problem  
22 and not cause other water problems. We can also request that  
23 this research be conducted at their expense until positive  
24 evidence of their claim is provided and subjected to a  
25 customer-approved competent third-party review. We feel that



1 this third-party review is both prudent and fair under the  
2 circumstances here. I thank you for letting me have the time.

3 COMMISSIONER BRADLEY: Mr. Chairman, are we about to  
4 entertain a motion?

5 CHAIRMAN BAEZ: We can if there are no questions of  
6 Mr. Forehand.

7 COMMISSIONER BRADLEY: I would -- I've listened,  
8 listened very closely to this discussion and I still have not  
9 been thoroughly convinced that my original hypothesis is  
10 incorrect. And maybe I need to get some advice from legal here  
11 to give me some guidance as to what can be done based upon what  
12 Commissioner Deason asked earlier. But I still would be in  
13 favor of allowing Aloha to make any decision that they need to  
14 make to make a business decision and to make a scientific  
15 decision and to clean up this black water and for us to come  
16 back later and to review their progress, but not to make a  
17 commitment with respect to this being, becoming a part of the  
18 rate base. Prudence will be determined at a later date. I  
19 just think that Aloha is in a better position to make, to make  
20 this decision in order to get the desired outcome. And I think  
21 that by us putting some specifications upon them as it relates  
22 to this decision, I think that we may be tying their hands.  
23 And I think that if we give them the latitude to make this  
24 business decision and to make this scientific decision, I think  
25 that they will produce a more prudent outcome. That's just my

1 opinion. And I don't know how we get there based upon what  
2 Commissioner Deason was concerned about, the previous order as  
3 it relates to this issue of hydrogen sulfide in the water and  
4 reducing it by 98 percent that was done in the previous order,  
5 I think. If I understood, if I understood correctly, that was  
6 the issue.

7 CHAIRMAN BAEZ: Commissioner Deason?

8 COMMISSIONER DEASON: Well, first of all, let me say  
9 I'd like for us to move on on this matter. I'm not so sure  
10 that we're going to resolve it today, but we need to -- we've  
11 got other issues and other matters we need to address.

12 It seems to me that there is agreement that the  
13 98 percent standard in the original order is no longer  
14 practicable, so we need to make a decision changing that.

15 Then the question is what do we do, if anything, in  
16 addition to that? And I've heard Commissioner Bradley's  
17 concern and I share this -- share it. We want the problem  
18 addressed. We do not want to micromanage. We do not want to  
19 prescribe. We want the problem corrected. But it seems to me  
20 that there should be some burden on the company to come forward  
21 to demonstrate through some type of a reporting process or  
22 regimen as to what they're doing and what the results of those  
23 tests are, and then we as a Commission, as regulators, if we  
24 need to take remedial action, we can.

25 So I'm not sure exactly what that should be. I do

1 agree with staff's recommendation that within 60 days there  
2 should be a proposal provided as far as testing in terms of  
3 how, when and where, so I'm not opposed to that. And I am in  
4 agreement that we need to remove the 98 percent standard. I am  
5 not in a position at this point to prescribe what type of  
6 treatment methodology or other measures should be employed to  
7 address the black water problem. It seems to me that staff's  
8 recommendation goes a long way in getting us there. So in the,  
9 I guess in the mode of trying to move us along, I'm just going  
10 to recommend or move that we adopt staff's recommendation. And  
11 then I'm -- what other discussion we need, that's fine, but at  
12 least we can move it along a little bit.

13 CHAIRMAN BAEZ: Thank you, Commissioner. There's a  
14 notion. And before there's a second, if you've got to say  
15 something --

16 COMMISSIONER DAVIDSON: Well, no, I was going to say  
17 I may be able to second that. But as Commissioner Deason was  
18 talking, I've heard sort of three key themes that I've heard  
19 from the Chairman, Commissioner Jaber, Commissioner Bradley,  
20 everyone, and that is the standard needs to change, there's an  
21 obligation to meet the standard, and it's the burden -- the  
22 burden is on the company to test and report to the PSC the  
23 results of those tests as to how they're meeting that standard,  
24 but we're not going to micromanage and tell them how to meet  
25 it. So I guess those four elements.

1           And, and if staff's rec sort of encompasses those  
2 four, and I'll take someone's representation that it does, I  
3 will second the motion.

4           CHAIRMAN BAEZ: There is a --

5           COMMISSIONER BRADLEY: Staff, does your  
6 recommendation encompass what was just put forth?

7           MR. WALDEN: Yes, sir, I believe it does.

8           COMMISSIONER BRADLEY: Okay.

9           CHAIRMAN BAEZ: There's a motion and a second.

10          COMMISSIONER DAVIDSON: And a clarification: It's  
11 the modified rec?

12          CHAIRMAN BAEZ: That is the modified rec.

13          COMMISSIONER DAVIDSON: Okay. And we're not  
14 prescribing the method?

15          MR. WALDEN: That's correct.

16          CHAIRMAN BAEZ: We're not prescribing the method.

17          COMMISSIONER BRADLEY: So we're clarifying the intent  
18 of the recommendation?

19          CHAIRMAN BAEZ: Let me just, before we vote on it,  
20 just so -- I can tell you, Commissioner Bradley, I do share  
21 your concerns. I don't want to micromanage this issue. I  
22 don't see the setting of or the changing of a standard, a  
23 measurement that we already set as micromanaging. That number  
24 forces the company to make progress towards solving the  
25 problem, and it's the only way that we can confirm that money

1 is getting spent to do it. And the whole purpose of the order,  
2 as Commissioner Jaber had mentioned, was you get them to put  
3 the investment in and then we'll see about recovery if it's  
4 merited at all. But the burden is always going to be on them.  
5 The only way to get them to spend the money to make the  
6 investment necessary to address this problem is if they have to  
7 report on a, on a timely basis every, every so often. To me  
8 that's not micromanaging. It's just ensuring that --  
9 otherwise, a perfect business decision, you know what it is? I  
10 don't spend any money. At the end of the day it didn't get  
11 solved, but I'm not out \$4.5 million or whatever it's going to  
12 be that I have to then try and meet a burden for recovery. So  
13 I share your concerns, but I do think that, that the  
14 recommendation kind of recognizes that.

15 COMMISSIONER BRADLEY: Right. And, you know, I get  
16 back to my what-if concern. If it doesn't work, it's on them.

17 CHAIRMAN BAEZ: There's a motion and second. All  
18 those in favor, say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Thank you, Commissioners. We are on  
21 Issue 5. Staff, it's been a while. Can you tee this one up?  
22 Thank you.

23 MS. GERVASI: Certainly. Issue 5 is staff's  
24 recommendation concerning what additional steps Aloha should  
25 take to address the black water problem. And what we're

1 recommending is that Aloha be strongly encouraged, rather than  
2 ordered, to either offer a low interest loan or a rebate  
3 program to customers who wish to avail themselves of it. And  
4 it would involve getting a loan or a rebate from Aloha for half  
5 of the cost of repiping copper, repiping homes with copper  
6 pipes up to \$2,500. And Aloha has filed some comments with  
7 respect to this issue with some additional suggestions as to  
8 how such a loan program might operate.

9 CHAIRMAN BAEZ: And that -- I did remember some  
10 details on the part of Aloha to that effect. Does that  
11 constitute, as far as you know, what their, what their offer is  
12 essentially or --

13 MS. GERVASI: I believe it is. They do state that  
14 they are willing to voluntarily implement a program with the  
15 specifics as outlined in their comments.

16 CHAIRMAN BAEZ: Mr. Deterding, you have some comment  
17 on this?

18 MR. DETERDING: Yes. Yes, sir, I do.

19 CHAIRMAN BAEZ: Okay.

20 MR. DETERDING: Aloha has been trying to renew its  
21 commitment to improving customer service. We have recently  
22 enlisted the services of customer service consultants and held  
23 workshops or a workshop and hope to repeat that in order to  
24 talk to our customers, get input from our customers about where  
25 their concerns are and hopefully try and address those. So as

1 a further step in that direction, we made the offer as  
2 contained in my letter of June 24th to move forward with a low  
3 interest loan program suggested by the staff, and we put in  
4 there the basic tenets of that as we understood would be  
5 appropriate. And we are willing to move forward with that  
6 immediately and in hopes that that will assist those customers  
7 who are experiencing a problem with copper corrosion. And so  
8 we're ready to do that.

9 I do have some other concerns with the staff  
10 recommendation that I wanted to highlight. Again, this is one  
11 of those wording issues. At the beginning of the  
12 recommendation it says, to assist customers who have  
13 experienced damage due to high, due to the water's high  
14 hydrogen sulfide content. Well, I don't think there has ever  
15 been anyone who said that Aloha's, at least any expert who has  
16 ever said that Aloha's water contains high levels of hydrogen  
17 sulfide. It does not. It is fractions, small fractions of the  
18 secondary standard for hydrogen sulfide as I understand it.  
19 And, therefore, I don't believe that language is appropriate.  
20 It also appears again at the last paragraph under that same  
21 section of the staff analysis, the first section of the staff  
22 analysis in the first sentence that begins, "To financially  
23 assist customers."

24 So I, I mention this, I brought this to the attention  
25 of the staff, I believe they agreed that those, those

1 statements are not supported by anything that's ever been found  
2 through the evidence or from the experts in this field. But  
3 with that aside, with that noted, we are ready to move forward  
4 and, with the loan program immediately.

5 COMMISSIONER JABER: Mr. Chairman, if we could -- I  
6 can try to offer to nip this in the bud, if it's the  
7 Commissioners' pleasure. Just to disclose, I don't support  
8 this issue. I don't support staff's recommendation.

9 COMMISSIONER DAVIDSON: And I'll tell you, to jump in  
10 too, I'm right there too. And I, you know, I'm not inviting  
11 the agreement, but I feel dense on this issue. Again, I'm not  
12 inviting agreement, but I feel like I'm living in Bizarro World  
13 on Seinfeld. If bad water has caused damage to a home, it  
14 seems -- and to pipes, it makes no sense that we're then going  
15 to somehow give this great program to customers where they get  
16 to borrow money to fix a problem caused by someone else and  
17 they're going to have a lien on their home in the meantime  
18 until they pay off the loan. I don't get it. I mean, if the  
19 water caused a problem, then the person that caused it is  
20 responsible. And if not, they're not. But I -- maybe, again,  
21 I'm dense. I'm missing the focus of this. Maybe there's some  
22 policy or program that I'm completely unaware of.

23 COMMISSIONER JABER: Well, obviously I don't, I don't  
24 think you've missed the boat. And I would, I would add to  
25 that, Mr. Chairman, that my concern is even more legal in



1 nature. We don't have the jurisdiction to approve a loan  
2 program. And even encouraging it somehow, although it's a  
3 good -- I know it's well-intentioned. We've toyed with the  
4 idea for many years. To even encourage it and allow it to  
5 exist sends the signal unintentionally to a consumer that  
6 somehow we could implement it, have a, have a say in how it's  
7 implemented, and then arbitrate some sort of dispute related to  
8 it. So I think this is a dangerous path to take.

9 CHAIRMAN BAEZ: Commissioners, any other comments or  
10 questions? It sounded like a good idea at the time. That's  
11 one for the file.

12 COMMISSIONER BRADLEY: I hadn't thought about it from  
13 that perspective.

14 CHAIRMAN BAEZ: I mean, no. But do you see what the  
15 problem -- I guess once I started reading the details in the  
16 company's letter, it's like, well, okay, fine. And I guess my  
17 question -- having to go last all the time, how great is that?  
18 My questions were going to be, you know, this encouragement  
19 doesn't constitute an endorsement of the, of the program set  
20 forth in, in the letter. And, and, and then again, what,  
21 what -- that begs a question really, what's the point? I mean,  
22 if we just say it, say it verbally, then I don't --

23 MS. GERVASI: And I would agree that I don't think  
24 that the staff contemplated either that the Commission would  
25 get involved in this level of detail. When we saw the

1 utility's comments, we questioned whether 6 percent might be a  
2 little high. We certainly don't recommend that the Commission  
3 --

4 CHAIRMAN BAEZ: That whole lien thing --

5 MS. GERVASI: I'm sorry.

6 CHAIRMAN BAEZ: Go ahead. I'm sorry.

7 MS. GERVASI: We don't recommend that the Commission  
8 recognize now the cost, the administrative cost of implementing  
9 it. If that's something Aloha wants, they can come back and  
10 ask for cost recovery.

11 What we envisioned was a program by which the  
12 customers could get a loan at a good low interest rate to help  
13 them to finance the cost of repiping, if they so chose. And if  
14 they thought that the program was something that they would  
15 voluntarily like to avail themselves of, that that would be the  
16 customers' choice based on what parameters Aloha offered to  
17 them.

18 CHAIRMAN BAEZ: And that's -- and I guess,  
19 Commissioners, that's really the key. I think, at least in my  
20 mind, it's well-settled. I don't know that we even need to  
21 address this issue.

22 COMMISSIONER JABER: I think we just did.

23 CHAIRMAN BAEZ: This is America and the company is,  
24 you know, free to make the offer that they want. I don't know  
25 anybody that's going to take this one, but that's beside the

1 point.

2 So, Commissioner, there seems to be some consensus  
3 anyway not to address Issue 5 --

4 COMMISSIONER DEASON: That suits me fine.

5 CHAIRMAN BAEZ: -- based on our biting remarks.

6 Okay. Moving on to Issue 6.

7 MS. GERVASI: So that I'm clear, that's a no vote and  
8 we'll just take it up in the order.

9 CHAIRMAN BAEZ: That's a no vote. We'll pretend like  
10 it never happened, and so thank you.

11 Issue 6.

12 And, Senator Fasano, you're poised -- you mentioned  
13 that you had comment.

14 SENATOR FASANO: No.

15 CHAIRMAN BAEZ: All right. I got it. But Dr. Kurien  
16 does. I just, I'm taking poll here just to make sure who I  
17 need to -- very well.

18 COMMISSIONER DEASON: Mr. Chairman, in an effort to  
19 move this along, I'm willing to make a motion on Issue 6. Deny  
20 staff's recommendation. Let's move forward with the deletion  
21 proceeding.

22 CHAIRMAN BAEZ: There's a motion.

23 COMMISSIONER DAVIDSON: I will, I will, I will second  
24 that motion.

25 CHAIRMAN BAEZ: There is a motion to deny staff and

1 proceed with deletion proceedings and a second. All those in  
2 favor, say aye.

3 COMMISSIONER DAVIDSON: Aye.

4 COMMISSIONER DEASON: Aye.

5 COMMISSIONER BRADLEY: Aye.

6 CHAIRMAN BAEZ: Aye.

7 CHAIRMAN JABER: I want to -- I'm sorry, Mr.

8 Chairman. I want to support it and will, but at the end of  
9 this discussion staff is going to -- they need to articulate  
10 for us what we need to do. I think, Commissioner Deason, there  
11 --

12 COMMISSIONER DEASON: I see no need in waiting. I  
13 mean, we've had discussions about, well, even if there is a  
14 process put in place to correct the problem and if it works,  
15 and then we have to wait a year to see the reporting before we  
16 impose any type of a standard, I don't want to wait two years  
17 before we decide whether we're going, after millions of dollars  
18 have been spent that may or may not work, whether we're going  
19 to proceed with deletion. I think we need to address that  
20 subject head-on and make a decision, an informed decision.

21 COMMISSIONER JABER: I agree with you. But since  
22 we're having to modify staff's recommendation to entertain that  
23 motion, I'm putting them on notice that if there's something  
24 else we need to discuss, I'd very much like to know what that  
25 is. But, no, that's -- I voted in the affirmative on that.

1           COMMISSIONER DAVIDSON: And I agree with you,  
2 Commissioner Jaber. I want to just -- and I guess in a sense  
3 express some frustration with staff. I specifically asked for  
4 at least an option that would consider how we would move  
5 forward with deletion in the event we chose to do it. The  
6 Commission has chosen to do it.

7           I specifically, if I recall, said identify in the  
8 recommendation that I've asked for that so there's no question  
9 about where the option came from. I asked for it. I wanted us  
10 to be in a position today to have the answer to what  
11 Commissioner Jaber just asked: How do we proceed with it? We  
12 will all put our thinking caps on. I'm confident the senator  
13 will go back and work with Pasco County to figure up some  
14 options. And we're getting to the point of where we're  
15 proceeding with the deletion obviously contingent upon  
16 customers getting service, we'll get there. But I asked for  
17 that option, it could have been voted down, but I asked for it  
18 specifically to have those concerns before us today so we could  
19 intelligently address those and not off the cuff do it. Staff  
20 did not provide that. I don't know why. I'm not asking for an  
21 explanation now. I'm a bit frustrated.

22           But Commissioner Jaber hit the nail on the head. How  
23 do we do this? Well, we will figure it out. I'm going to  
24 start thinking about it now. I'm sure all the parties in the  
25 room are going to start thinking about it now. So with that --

1 and I apologize for sort of venting, but I, I don't know what  
2 else could have been done. I specifically asked for an option  
3 that would address this; didn't get it.

4 CHAIRMAN BAEZ: Well, the vote, the vote has been  
5 taken and Issue 6, staff's recommendation has been denied.

6 One question. I mean, obviously you have some  
7 homework to do and think about. I think to that, Commissioner  
8 Jaber and Davidson's concerns about how to move forward on  
9 this, I think you need to -- I think we need to assess what the  
10 meanings of, for instance, Issue 4 and so on are in the context  
11 of moving forward with deletion petitions. Did I just speak  
12 too low there? I'm sorry. I mean, there's obviously, there's  
13 obviously some impact on the other issues. And I'm pretty sure  
14 we don't need to discuss or get into that now, but at the same  
15 time I think that's something that we need to be thinking  
16 about.

17 MS. GERVASI: And I think by denying staff on Issue  
18 6 we simply get a hearing date and set Issue 6 straight for  
19 hearing, get a procedural lawyer out as soon as we can on that.  
20 And then if Issue 4 is protested, we may be able to roll that  
21 issue into the hearing depending on the time frame.

22 COMMISSIONER JABER: Yeah. My, my question, giving  
23 staff the opportunity to think about this some more, Mr.  
24 Chairman, is if you look at Issue 6, for example, unless I'm  
25 not looking where I need to be, it was not noticed as a PAA,

1 for example. So not putting myself in legal's place to give  
2 advice, but the lawyer in me tells me I think we have to  
3 immediately set it for hearing because it wasn't noticed as a  
4 PAA. That was my question, Commissioner Deason. Those are the  
5 kinds of questions I have. Do you need us, for example, to go  
6 ahead and follow up with a motion setting this for hearing?

7 MS. GERVASI: I think, yes, ma'am, to deny staff and  
8 to set this issue directly for hearing would be the way to, to  
9 handle it.

10 COMMISSIONER JABER: Yeah. Commissioner Deason,  
11 would you, would you like to do that or do you want me to do  
12 it?

13 COMMISSIONER DEASON: That was contemplated in my  
14 motion. If we're going to proceed, we're going to have to set  
15 the matter for hearing.

16 CHAIRMAN BAEZ: Set it for hearing.

17 COMMISSIONER JABER: Okay. I think that clarifies  
18 it.

19 CHAIRMAN BAEZ: Show the motion and our vote so  
20 modified.

21 COMMISSIONER DEASON: Move staff on Issue 7.

22 CHAIRMAN BAEZ: There's a motion.

23 COMMISSIONER JABER: Second.

24 CHAIRMAN BAEZ: Without objection, show Issue  
25 7 approved. Thank you all.

(Agenda Item concluded at 4:27 p.m.)

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I, LINDA BOLES, RPR, 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 8th DAY OF JULY, 2004.

  
LINDA BOLES, RPR  
FPSC Official Commission Reporter  
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