

Bane *MAB*
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State of Florida



Public Service Commission

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COMMISSION
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DATE: December 21, 2004
TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)
FROM: Office of the General Counsel (Gervasi, Helton) *PS Mart*
Division of Economic Regulation (Fletcher, Stallcup) *WAL B5 JDS*
RE: Docket No. 020896-WS – Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

AGENDA: 01/04/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: This recommendation should be taken up immediately following the recommendation on whether to grant Aloha Utilities, Inc.'s Motion for Termination of Proceedings filed in Docket No. 020896-WS.

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020896.RCM.DOC

Case Background

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility providing service to approximately 14,000 customers in Pasco County, including approximately 11,000 customers in the Seven Springs area. The Seven Springs area has a continuing problem with odor and black water caused by the presence of hydrogen sulfide.

By Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, the Commission, among other things, ordered that Docket No. 020896-WS proceed directly to a formal hearing on the merits of three deletion petitions filed in that docket by customers of Aloha. Also by that order, the Commission proposed to modify the fourth ordering paragraph of Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU (rate case order), to read that:

Aloha shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water

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leaves the treatment facilities of the utility. Compliance with such requirement shall be determined based upon samples taken at least annually from a point of connection just after all treatment systems and before entry of such water into the transmission and distribution system of the utility. Aloha shall implement this standard no later than February 12, 2005.

On August 9, 2004, four *pro se* parties who are customers of Aloha individually and collectively filed a protest to portions of that proposed action. The protest disputes the proposed requirement that Aloha meet the 0.1 mg/L goal as the water leaves Aloha's treatment facilities, as well as the methodology upon which compliance with that goal shall be measured. The protest was not against the portion of the proposed action that eliminated the prior standard of 98% removal of hydrogen sulfide, and which requires Aloha to instead make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water and to implement that standard by no later than February 12, 2005. Therefore, a partial consummating order issued making the non-protested actions final and effective and keeping Docket No. 010503-WU open to resolve the protest.¹

On September 22, 2004, Order No. PSC-04-0929-PCO-WS issued, consolidating the two dockets for the purposes of having a single hearing on the deletion petitions and on the protest to Order No. PSC-04-0712-PAA-WS.² Order No. PSC-04-0929-PCO-WS also declared that the Order Establishing Procedure issued in Docket No. 020896-WS³ shall apply to the protest as well as to the deletion petitions, including an additional deletion petition filed on August 17, 2004. The four deletion petitions at issue relate to the following areas included within Aloha's Certificate No. 136-W: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4.

On November 9, 2004, Aloha filed a Motion for Termination of Proceedings as They Relate to Deletion of Territory (Motion for Termination), which is the subject of another recommendation to be filed for the January 4, 2004, agenda conference, and which should be taken up prior to a ruling on this recommendation. This recommendation addresses what action the Commission should take in the event that the Motion for Termination is granted. If the Commission denies the Motion for Termination, this recommendation will need not be ruled upon.

The Commission has jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

¹ Order No. PSC-04-0831-CO-WS, issued August 25, 2004, in both dockets.

² Aloha filed a motion for reconsideration of Order No. PSC-04-0929-PCO-WS, or in the alternative, a motion for bifurcation of the two dockets. Those motions was denied by Order No. PSC-04-1156-FOF-WS, issued November 22, 2004.

³ Order No. PSC-04-0728-PCO-WS, issued July 27, 2004.

Discussion of Issues

Issue 1: What action, if any, should the Commission take in the event that Aloha's Motion for Termination is granted?

Primary Staff Recommendation: If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Primary staff recommends that the Commission should decline to initiate deletion proceedings against Aloha because there is not probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Because Aloha provides potable water which meets all state and federal drinking water standards up to the point of connection to its customers' meters, primary staff does not believe that the facts relating to Aloha's provision of water service to Trinity, Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Aloha should be required to continue to submit monthly project status reports up to the time of implementation of the treatment standard imposed by Order No. PSC-04-0712-PA-WS. (Gervasi, Fletcher)

Alternate Staff Recommendation: If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Alternate staff believes the facts relating to Aloha's provision of water service to Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Alternate staff recommends that the appropriate penalty pursuant to section 367.161(2), Florida Statutes, for such statutory violation is to amend or partially revoke Aloha's water certificate no. 136-W to delete these insufficiently served areas from its service territory. The Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place. Procedurally, alternate staff recommends that the Commission open a new docket for this deletion proceeding, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), and, at the expiration of that 30 days, issue the Order to Show Cause appended to this recommendation as Attachment C, to initiate the deletion proceeding and provide a point of entry for Aloha to request a hearing. The requisite notice should be served on Aloha by personal service or certified mail, and submitted for the next available publication of the Florida Administrative Weekly and to a newspaper of general circulation in the area affected within seven days of the Commission's vote on the matter. (Helton, Stallcup)

Primary Staff Analysis: In Order No. PSC-02-0593-FOF-WU (most recent rate case order), the Commission extensively discussed the “black water” problem experienced by a number of Aloha’s customers, and made the following observations:⁴

- Hydrogen sulfide naturally occurs in much of the source water for Florida’s utilities. The black water problem is not unique to the customers of Aloha and does occur in other areas of Florida
- Hydrogen sulfide in Aloha’s source water is converted to sulfates by chlorination.
- Copper sulfide (black water) occurs when elemental sulfur or sulfate in the water is converted biochemically in the customer’s home from harmless sulfate and elemental sulfur back into hydrogen sulfide.
- Aloha’s water contains very small quantities of sulfate as it is delivered to the customer – at most one-tenth of the national limit.
- Aloha meets the drinking water standards set forth by the Department of Environmental Protection (DEP) for water quality, and the black water is created beyond the meter. Therefore the quality of Aloha’s product is satisfactory.
- The method that Aloha has chosen to comply with DEP’s water quality rules – the conversion of sulfides to sulfates through chlorination – has not proven to be an adequate remedy. Aloha should take a more proactive approach to dealing with the black water problem.
- For those customers experiencing black water, the only absolute fix appears to be to replace existing copper pipe with chlorinated polyvinyl chloride (CPVC) piping.
- Another possible solution to address the black water problem is the removal of almost all hydrogen sulfide.

From comments made by various customers at the April 8, 2004 customer hearings held in Docket No. 020896-WS and in written comments submitted to the Commission, it appears that there is a public perception among customers who have requested to be deleted from Aloha’s service area that Aloha has done nothing to address the “black water” problem that has been ongoing since at least 1996. However, this is simply not the case. That said, staff understands the frustration that these customers feel as a result of struggling with this problem for so long. The following is a summary of the sequence of events that have caused delay on the part of Aloha to begin construction of treatment facilities to combat the problem.

⁴Attachment A contains the full text of Section III and Section IV.A.1 of the rate case order, which address the “black water” issue.

1997-1999

The Commission first required Aloha to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water and to prepare an engineering report that addressed that evaluation in Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WS⁵. Aloha filed the requisite engineering report in June, 1997, recommending that it be allowed to continue adjusting the corrosion inhibitor dosage level in an ongoing effort to eliminate the black water problem. Aloha also recommended that if hydrogen sulfide treatment facilities were required, the Commission should approve the construction of three central water treatment plants which utilize packed tower aeration. Aloha estimated that construction and operation of those plants would increase customer rates by 398 percent.

In a June 5, 1998 letter, Aloha again stated that it was willing to begin construction of three centrally located packed tower aeration treatment facilities to remove hydrogen sulfide from the source water. Aloha stated that it was willing to proceed with this upgrade in order to address customer quality of service concerns and to comply with future Environmental Protection Agency (EPA) regulations. Before commencing construction of these water treatment facilities, however, Aloha requested that the Commission issue an order declaring it prudent for Aloha to construct these facilities. Upon issuance of such order, Aloha stated that it planned to construct the three central packed tower aeration water treatment facilities in three phases and that it would initiate a limited proceeding to increase rates in three phases.

In Order No. PSC-99-0061-FOF-WS, issued January 7, 1999, in Docket No. 960545-WS⁶, the Commission noted that it required Aloha to survey its Seven Springs water customers about the quality of their water. Aloha reported that it sent 8,597 surveys to its Seven Springs customers. The Commission received 3,706 responses, constituting a 43% return rate. Of those responses, 73% indicated that they have observed discolored water during the past two years, and 71% indicated that the odor and taste was unacceptable. 56.7% indicated that the water pressure was acceptable. 83.7% indicated that they were unwilling to pay higher water rates. The Commission noted that the survey showed that many of Aloha's customers were not satisfied with Aloha's water quality, but that the majority of the customers who responded to the survey were unwilling to pay higher rates to improve their water quality.

The Commission identified four available options which could improve the water quality: (1) the construction of hydrogen sulfide treatment facilities to remove hydrogen sulfide from the supply wells; (2) for Aloha to obtain a different source of supply; (3) for Aloha's customers to modify their hot water heaters and flush the lines within the home with bleach; and (4) the removal of copper pipes in customers' homes and replacement with PVC or CPVC pipes, which may have to be accomplished in order to stop corrosion already present in some homes. With respect to option (1), the Commission noted that Aloha has considered several types of treatment for removing hydrogen sulfide and that construction of three central treatment plants utilizing

⁵ In Re: Application for approval of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc., and In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

⁶ In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

packed tower aeration appeared to be the best available technology for hydrogen sulfide removal. However, Aloha estimated that these upgrades would increase a customer's water bill for 6,000 gallons from \$14.74 to \$58.75 or 3.98 times the current rate. Further, the Commission noted that this treatment method should reduce, but not necessarily eliminate, the frequency and amount of discoloration observed within the home, and that the staff believed that the only demonstrated method for permanently eliminating the black water discoloration within the home is to replace the copper plumbing with a different material. The Commission found that although there is a black water problem, it appeared that the customers were unwilling to pay for improvements which may or may not alleviate the problem, and that there was no guarantee that packed tower aeration would completely correct the problem. By proposed agency action, the Commission concluded that it should take no further action in regards to quality of service in that docket.

Moreover, the Commission noted that Aloha was prepared to begin construction of the water system upgrade in three phases, with requested rate increases upon the completion of each phase. Because there was no regulatory requirement for this treatment process, Aloha requested that the Commission declare it prudent to construct the facilities before construction began. However, because the large majority of customers who responded to the survey indicated that they were not willing to pay higher rates for better water quality, by final agency action, the Commission declined to make a prudency determination.

2000-Present

The Commission's proposed decision to take no further action in regards to quality of service in Docket No. 960545-WS was protested by three customers. A hearing was conducted in March 2000. By Final Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, the Commission noted that several witnesses expressed frustration that although the water meets DEP and EPA standards, the water needs improvement and something needs to be done about it. Accordingly, the Commission found that it was in the public interest to require the utility to take more proactive corrective actions. The Commission noted that Aloha began using a corrosion inhibitor in early 1996 to help resolve the black water problem and to reduce the water's corrosivity, but that the problem continued. Additional treatment facilities, specifically packed tower aeration, were again identified as potential solutions in a study submitted by utility witness Porter. The Commission found that the utility was willing to move ahead with those improvements if desired by the customers and the Commission.

The Commission required Aloha to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes. Witness Porter suggested that a pilot study was needed to more accurately determine the treatment results and ultimately the costs to remove the hydrogen sulfide. He proposed sharing the results of the pilot project with the DEP to see what the DEP would permit to be built. The Commission required Aloha to file monthly reports indicating the status of permitting and construction for the pilot project and the results of the pilot project on the quality of water.

Utility witness Watford testified that the only known way to completely eliminate the black water problem is to repipe the homes with CPVC or a material other than copper. However, the Commission found that the utility did not appear to be willing, or financially able,

to offer its customers a rebate or a low cost loan for the purpose of repiping their homes at that time. The Commission noted that Rule 25-30.225(5), Florida Administrative Code, states that “[e]ach water utility shall operate and maintain in safe, efficient, and proper condition, all of its facilities and equipment used to distribute, regulate, measure or deliver service up to and including the point of delivery into the piping owned by the customer.” And the Commission noted that Rule 25-30.210(7), Florida Administrative Code, defines “point of delivery” for water systems to mean “the outlet connection of the meter for metered service or the point at which the utility’s piping connects with the customer’s piping for non-metered service.” The Commission found that because the utility’s responsibility ends at the meter, it could not require the utility to offer low cost loans or rebates for the purpose of repiping customers’ homes. However, the Commission noted that if Aloha were to propose a financial incentive program to the customers for repiping, the Commission could review the recovery of the associated program costs for appropriateness.

By Order No. PSC-02-1428-TRF-WU, issued October 18, 2002, in Docket No. 010156-WU,⁷ the Commission noted that according to the pilot project reports that the Commission required the utility to file on a monthly basis by Order No. PSC-00-1285-FOF-WS, Aloha discovered another treatment process, identified by the trade name “MIEX,” to remove the hydrogen sulfide from the water supply. That treatment process uses a specifically engineered magnetic ion exchange resin. At the time of issuance of Order No. PSC-02-1428-TRF-WU, Aloha had tested the technical and economical feasibility of using MIEX to combat the black water problem and was nearing completion of its final feasibility report concerning that treatment process.⁸ However, the utility engineer’s estimate was that the full-scale MIEX treatment process would cost at least \$10,000,000, and that the total cost of the MIEX pilot project would be approximately \$200,000 to \$300,000. Aloha has since stated that it chose not to pursue implementation of the MIEX process because in addition to the cost of implementation, the required resin was only available through a single provider located in Australia.

By the rate case order issued April 30, 2002, the Commission denied Aloha’s requested rate increase and required the utility to implement a treatment process for all its wells that is designed to remove at least 98% of the hydrogen sulfide in the raw water, starting with wells 8 and 9, which have the highest hydrogen sulfide concentration in the raw water.

Aloha exercised its legal right to appeal the rate case order. On August 5, 2002, the Commission granted a partial stay of the rate case order pending appeal. The requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed.⁹ The First District Court of Appeal affirmed the rate case order and subsequently denied

⁷ In Re: Application for increase in service availability charges for water customers in the Seven Springs service area in Pasco County by Aloha Utilities, Inc.

⁸ The final feasibility report, entitled “2002 Water Facilities Upgrade Report,” was filed October 18, 2002, in Docket Nos. 960545-WS and 010503-WS.

⁹ Order No. PSC-02-1056-PCO-WU.

Aloha's request for reconsideration on June 12, 2003. The new date to implement the 98% reduction solution thus became, and remains, February 12, 2005.¹⁰

The first of the four deletion petitions in Docket No. 020896-WS was filed on July 18, 2002 – after the rate case order was appealed, before the partial stay was granted, and almost a year before the Court's mandate issued. Among other things, that petition asked that the required action plan for removing 98% of hydrogen sulfide be approved only after an independent audit of Aloha's processing plant and methodology. The Commission held action on the petition in abeyance from December 9, 2002 to March 8, 2004, pending the conclusion of the appeal of the rate case order.¹¹

While the deletion docket was in abeyance, the Office of Public Counsel (OPC) volunteered to conduct and finance an independent audit of Aloha's processing plant and methodology that had been requested by the first deletion petition. That audit was conducted by Dr. Audrey Levine of the University of South Florida. Dr. Levine's findings and conclusions are contained in a two-phase audit report. Phase I of the report was issued in August 2003 and Phase II was issued in February 2004. Phase II of the report identifies several potential treatment options, each of which may be effective in resolving the odor problem and the formation of copper sulfide in homes that do not already exhibit a black water problem. The report indicates that there is no guarantee that the use of either packed tower aeration or alternative disinfection can completely alleviate the black water problem.

Customer service hearings were conducted on April 8, 2004, to obtain the customers' views on the audit report and the implications of its findings. The customers generally did not address the specifics of the audit report and the proposed treatment options. Instead, virtually all of the customers who testified stated that they wished to be deleted from Aloha's service area in order to obtain service from Pasco County. By letter dated May 14, 2004, a copy of which is appended to this recommendation as Attachment B, the County advised that assuming the Aloha system or a portion of it was for sale, the County is ready, willing and able to pursue a purchase. However, Aloha has advised the County that it is not interested in even discussing the potential sale of its system and the County's policy is to pursue the acquisition of private utilities only when the utility is willing to transfer ownership.

Dr. Levine's audit report identified several potential options to modify the existing treatment system, including packed tower aeration, alternative oxidants, and membrane technologies.¹² With respect to alternative oxidants, the study suggests that the most likely candidate oxidants are hydrogen peroxide (H₂O₂) or ozone, and that an advantage of using alternative oxidants is that the chlorine demand of the water will be reduced allowing for more

¹⁰ On July 29, 2003, Aloha requested a 100-day extension to the new February 12, 2005 deadline. The Commission denied that request as premature by Order No. PSC-03-1157-PCO-WU, issued October 20, 2003.

¹¹ Order No. PSC-02-1722-PCO-WS, issued December 9, 2002. Order No. PSC-03-0325-FOF-WS, issued March 6, 2003, denied customer requests for reconsideration of the abeyance order. Order No. PSC-04-0254-PCO-WS, issued March 8, 2004, removed the docket from abeyance.

¹² These treatment options are more fully discussed in Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU.

effective use of chloramination. However, while H₂O₂ has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. The science suggests that it will be effective for that purpose; but the science has not been proven in a full-scale utility application. Aloha has chosen to implement this methodology, which is substantially less expensive to implement than aeration or membrane technologies, and has retained Dr. Levine as a consultant. In its most recent project status report dated December 10, 2004, Aloha advises that it has submitted the initial permit application submittal package to the DEP for review and approval and that it has selected contractors to provide construction services for the project. Further, Aloha advises that testing work is underway on Dr. Levine's H₂O₂ treatment process.

By Order No. PSC-04-0712-PAA-WS, the Commission noted that it will review the prudence of the option that Aloha implements during any future rate proceeding wherein Aloha requests, and carries the burden to prove, that the costs of the treatment process should be included in rates. Moreover, the Commission noted that the 98% removal standard required by the rate case order did not appear to be attainable for all of Aloha's wells, due to low concentration of hydrogen sulfide in some of the wells. In noting that Tampa Bay Water, a wholesale water supplier in the area, has voluntarily imposed a standard for hydrogen sulfide not to exceed 0.1 mg/L for its finished water, the Commission, by proposed agency action, found it appropriate for Aloha to apply that same standard because it appears to be reasonable and attainable, and will diminish the occurrences of black water. Numerous customers have expressed concern about the experimental nature of the H₂O₂ treatment methodology, and certain customers have protested portions of the Commission's proposed modification of the rate case order as a result of those concerns. A hearing to resolve the protest is scheduled to commence on March 8, 2005.

The above discussion shows that Aloha has, in fact, considered several treatment alternatives to alleviate the black water problem experienced by its customers, including packed tower aeration and MIEX, has performed a pilot study of the MIEX option, and is in the process now of implementing H₂O₂ technology to address the problem. Aloha is currently under a requirement imposed by Order No. PSC-04-0712-PA-WS to make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility, and to implement that standard no later than February 12, 2005. Aloha's project status reports filed to date indicate that the utility is working to meet that implementation deadline.

Although customers have complained for many years about the quality of the water they receive from Aloha, the above discussion shows that contrary to public opinion, Aloha does not have a history of ignoring the problem. Moreover, as noted above, the Commission has found by prior order that the utility's responsibility ends at the meter.¹³ In making that finding, the Commission cited to Rules 25-30.225(5) and 25-30.210(7), Florida Administrative Code. Rule 25-30.225(5) requires each water utility to operate and maintain all of its facilities and equipment in safe, efficient, and proper condition, up to and including the point of delivery into the piping

¹³Order No. PSC-00-1285-FOF-WS, Issued July 14, 2000, in Docket No. 960545-WS, In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County, at page 24.

owned by the customer. Rule 25-30.210(7) defines "point of delivery" to mean "the outlet connection of the meter for metered service or the point at which the utility's piping connects with the customer's piping for non-metered service." These rules make it clear that a black water problem occurring on the customers' side of the meter is not covered under section 367.111, Florida Statutes.

Further, the DEP, not the Commission, has the statutory authority to establish standards for drinking water quality pursuant to the Florida Safe Drinking Water Act, sections 403.850 et seq., Florida Statutes. Primary drinking water regulations can address contaminants that "may have an adverse effect on the health of the public." §403.852(12). Secondary drinking water standards can address contaminants that "may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use" or which otherwise adversely affect the public welfare. §403.852(13). DEP has recently adopted regulations that address the required treatment of hydrogen sulfide in water from new water wells. However, those rules do not apply to existing wells such as Aloha's. As stated in many prior Commission orders, Aloha's drinking water appears to comply with all applicable DEP drinking water standards.

If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Primary staff recommends that the Commission should decline to initiate deletion proceedings against Aloha at this time because there is not probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Because Aloha provides potable water which meets all state and federal drinking water standards up to the point of connection to its customers' meters, primary staff does not believe that the facts relating to Aloha's provision of water service to the Trinity, Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Aloha should be required to continue to submit monthly project status reports up to the time of implementation of the treatment standard imposed by Order No. PSC-04-0712-PAA-WS.

Staff will continue to closely monitor Aloha's progress toward achieving the standard of 0.1 mg/L of sulfides in its finished water by February 12, 2005. At a minimum, Aloha is required to meet this standard at the point where the finished water enters its distribution system. A final determination as to whether Aloha will be required to meet that standard at additional points in the distribution system, and whether conversion or removal of sulfides will be required, depends on the outcome of the hearing scheduled for March 8, 2005 on the customers' protest of Order No. PSC-04-0712-PAA-WS. In the event that Aloha fails to meet the February 12, 2005 deadline, or fails to comply with the requirements of the final order that is issued in the protest docket, staff will promptly file a recommendation for the Commission to further address the matter and potentially initiate a show cause proceeding at that time.

Alternate Staff Analysis: Section 367.045(5)(a), Florida Statutes, provides, in relevant part, that

[t]he commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest.

Section 367.045(6), Florida Statutes, provides that “[t]he revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days’ notice before it initiates any such action.”

Read together, these statutory provisions clearly provide that the Commission may amend a certificate of authorization to delete territory, if in the public interest, so long as it provides 30 days’ notice before initiating the action. Moreover, section 367.111(2), Florida Statutes, provides, in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for the Commission to delete the territory that is insufficiently served. Alternate staff believes that although it appears that Aloha is in compliance with the drinking water standards imposed by the DEP, there are sufficient facts to support the initiation of deletion proceedings against Aloha.

In determining whether it is in the public interest to amend a certificate of authorization, the Commission addresses, among other things, the financial and technical ability of the utility to provide adequate service. See Rule 25-30.036, Florida Administrative Code. The Commission has been plagued for many years with Aloha customer complaints concerning the quality of water that Aloha provides, and questioning Aloha’s ability to provide adequate service. The following is a summary discussion of the “black water” problem experienced by Aloha customers that the Commission has been addressing for so long.

Customer testimony concerning poor quality of service provided by Aloha, due, in large part, to a “black water” problem, was first taken by the Commission over eight years ago, on September 9, 1996. Over 500 customers attended the customer testimony sessions. At page 19 of Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WS,¹⁴ the Commission noted that 57 of those customers presented testimony about Aloha’s quality of service, and that several of them represented various customer groups and spoke for a number of people. The Commission found that “[i]t is obvious that the customers are dissatisfied with the quality of water which Aloha is providing, have been unhappy with the water for many years, and do not trust the utility.” Many customers provided testimony about problems with low pressure, and about the water’s offensive taste and odor. Several customers testified about the damage which Aloha’s corrosive water has done to the plumbing inside their

¹⁴ In Re: Application for approval of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc., and In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

homes. Customers also described the poor attitude of Aloha's employees and stated that they believed that Aloha was not interested in improving the water quality, and that Aloha was not sincere in responding to their repeated complaints. At page 13 of the Order, the Commission found that "[t]he customers also provided many black-colored water samples which effectively demonstrated the poor quality of water which [was] coming out of their faucets." In finding that Aloha's quality of water service was unsatisfactory, the Commission noted that

[e]ven though Aloha is technically in compliance with State and Federal drinking water standards, customers from many areas within Aloha's service territory either testified or wrote letters to the Commission stating that their water is aesthetically objectionable. It smells bad, tastes bad, and in some cases it reacts with copper plumbing, turning the water black. The water is also corrosive to copper plumbing and is damaging the plumbing within many of the customers' homes.¹⁵

The Commission required the utility to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water and to prepare an engineering report that addressed that evaluation.¹⁶

The Commission noted that Aloha filed the requisite engineering report in June, 1997, recommending, among other things, that if hydrogen sulfide treatment facilities were required, the Commission should approve the construction of three central water treatment plants which utilize packed tower aeration.¹⁷ Aloha estimated that construction and operation of those plants would increase customer rates by 398 percent. In that same order at page 15, the Commission noted that Aloha had begun adding a corrosion inhibitor in early 1996. By Proposed Agency Action Order PSC-99-0061-FOF-WS, issued January 7, 1999, which was protested, the Commission determined that it should not take further actions regarding quality of service in the docket. Another hearing was conducted, with customer testimony being taken in two sessions on March 29, 2000. Several hundred customers attended each session and approximately 50 customers testified about black or discolored water, odor/taste problems, low pressure, and/or deposits/sediments. Again, many customers brought containers of discolored or black water to the hearing for viewing.¹⁸ Again the Commission concluded that the record was clear that the quality of the water met all applicable state and federal standards but that the customers were not satisfied with the product that they receive.¹⁹

¹⁵ Id. at 14.

¹⁶ Id. at 16.

¹⁷ See pages 3-4 of Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

¹⁸ Order No. PSC-00-1285-FOF-WS at page 11.

¹⁹ Id. at 15-16.

The Commission found the overall quality of service to be marginal and required Aloha “to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers’ homes.”²⁰ Some months later, the Commission clarified that Aloha “shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customer’s homes.” In so doing, the Commission declined to designate the specific treatment alternative, leaving Aloha to make that choice.²¹

Pending the completion of the pilot project, Aloha continued to use a polyphosphate corrosion inhibitor and chlorination to address the black water problem, as reflected in Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU (rate case order). When asked what steps Aloha had taken to alleviate the problem, DEP witness Foster testified that the utility was permitted to use a polyphosphate corrosion inhibitor on December 12, 1995, but that home treatment units can cause the corrosion inhibitor to be less effective because they tend to remove mineral calcium, iron, and magnesium, causing the water to become corrosive.²² The Commission found that this methodology, along with the conversion of hydrogen sulfide to sulfate or elemental sulfur through chlorination, had not proven to be an adequate remedy, and required Aloha to take additional measures to correct the problem.²³ Again customers testified mostly about the “black water” problem, but also about customer dissatisfaction with the taste and odor of the water, insufficient pressure, and attitude of the utility.²⁴ The Commission found that “a significant number of customers have been receiving ‘black water’ from Aloha for over six years, and it is past time for Aloha to do something about it.” Further, the Commission noted that: 1) Aloha has violated its water use permit with the Southwest Florida Water Management District starting in 1994, and consistently since 1996; 2) Aloha's customers have complained about black water since at least early 1996; 3) any actions that Aloha has taken to eliminate these problems have come about in response to requirements made by governmental authorities; and 4) the actions that Aloha has taken have been slow-moving and ineffective. For these reasons, the Commission again found the overall quality of service provided by Aloha to be unsatisfactory, and required Aloha to implement, within 20 months, a treatment process for all of its wells, starting with well nos. 8 and 9, that is designed to remove at least 98% of the hydrogen sulfide in the raw water.²⁵

Also in Order No. PSC-02-0593-FOF-WU, the Commission took note of section 367.111(2), Florida Statutes, and determined that “[w]hile the service provided by Aloha appears

²⁰ *Id.* at 20,22.

²¹ Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS.

²² Order No. PSC-02-0593-FOF-WU at 13.

²³ *Id.* at 14.

²⁴ *Id.* at 16.

²⁵ *Id.* at 20, 30.

to meet DEP standards, the question here is whether Aloha operates its system in the public interest.”²⁶ Further, the Commission noted that a DEP witness testified that Pasco County had a hydrogen sulfide problem in its water and installed a treatment system to address the problem. The Commission opined that if Aloha had committed itself to a more proactive approach to this problem, it could have prevented the situation from becoming as bad as it is and possibly could have eliminated it **entirely**.²⁷ The Commission set the rates at the minimum of the “range of return on equity “because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries.” The Commission also reduced the amount allowed for salaries and benefits of both the President and Vice-President by 50% upon finding that “the continuing problems with ‘black water’ over at least the last six years, the customers' dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility.”²⁸ Finally, the Commission required Aloha to implement five specific measures designed to improve customer service, including the formation of the Citizens’ Advisory Committee.²⁹

As noted in Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in the instant dockets, Aloha appealed the rate case order and the requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed.³⁰ The First District Court of Appeal affirmed the rate case order and subsequently denied Aloha’s request for reconsideration on June 12, 2003. Therefore, the new date to implement a solution to the “black water” problem became, and remains, February 12, 2005.

Two more customer service hearings were held on April 8, 2004, in Docket No. 020896-WS, to obtain customer views on Dr. Audrey Levine’s independent audit report of Aloha’s processing plant and methodology that had been requested by the first deletion petition. Approximately 200 customers attended each session and numerous customers testified. As further evidence that Aloha is not operating its system in the public interest, virtually all of the customers elected not to address the specifics of the audit report and the treatment options proposed therein. Instead, virtually all of the customers who testified stated that they wished to be deleted from Aloha’s service area in order to obtain service from Pasco County due to the “black water” problem and the poor quality of service they receive. Many carried picket signs into the hearing room which read “Better Water Now!”

As evidenced in Attachment B, the County has advised that it is ready, willing and able to pursue a purchase of Aloha. However, Aloha has advised the County that it is not interested in even discussing the potential sale of its system and the County’s policy is to pursue the acquisition of private utilities only when the utility is willing to transfer ownership. In the

²⁶ Id. at 24.

²⁷ Id. at 29.

²⁸ Id. at 30-31.

²⁹ Id. at 31-40.

³⁰ See Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, in Docket No. 010503-WU.

County's opinion, a transfer of utility customers or service area can only legally occur under certain scenarios, including: "(1) a willing sale by the utility owner; (2) exercise of the power of eminent domain; (3) a lease arrangement; or (4) a court ordered sale from a receivership to the highest bidder after the utility owner has abandoned the utility or the PSC has revoked the certificate(s) to operate causing an abandonment." Therefore, the Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place.

Staff recently mailed a survey to the customers who reside, or own property, in the four areas that customers have petitioned for deletion of territory, asking whether those customers are in favor of the Commission approving the deletion petitions and whether they have a black water problem at their premises. The survey response rate is approximately 49% to date. The results of the survey preliminarily show that 81% of the responding customers favor deletion, 9% do not favor deletion, and 10% do not know whether they favor deletion or not. 64% of the responding customers state that they have a black water problem at their premises. 59% of the responding customers who indicated that they did not have a black water problem at their premises still favored deletion, indicating a more systemic problem with the utility than just a "black water" problem. 59% of the responding customers provided additional comments. Of those, 63% complained of other quality of service issues, including the quality of the water, water pressure, and customer service, and 14% stated that they have found it necessary to purchase bottled water or filters, or they have abandoned the use of their saunas or bathtubs. Only 2% of the comments provided by Aloha's customers indicated that they had no problems with Aloha's service.

Finally, 19 customers prefiled testimony in the deletion docket (Docket No. 020896-WS) on November 18, 2004, in accordance with the Order Establishing Procedure issued in the docket. In their prefiled testimony, some customers state that they have experienced pinhole leaks in their copper piping, and many state that they believe the customer service from Aloha is not satisfactory. Many of these customers state that they have water softeners and/or water filters. All nineteen customers who prefiled testimony state that they experience poor water quality and wish to receive water from another utility.

For the foregoing reasons, alternate staff believes the facts relating to Aloha's provision of water service to Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Alternate staff recommends that the appropriate penalty pursuant to section 367.161(2), Florida Statutes, for such statutory violation is to amend or partially revoke Aloha's water certificate no. 136-W to delete these insufficiently served areas from its service territory. The Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place.

Procedurally, alternate staff recommends that the Commission open a new docket for this deletion proceeding, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), and, at the expiration of that 30 days, issue the attached Order to Show Cause to initiate the deletion proceeding and provide a point of entry for Aloha to request a hearing. The

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requisite notice should be served on Aloha by personal service or certified mail, and submitted for the next available publication of the Florida Administrative Weekly and to a newspaper of general circulation in the area affected within seven days of the Commission's vote on the matter.

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C. Issues Stipulated at Hearing

Issue 6. The cost rate for variable cost, related party debt shall be the prime rate plus two percent as of December 31, 2001.

Issue 12. Salary expense shall be reduced by \$21,268 to correctly allocate the annualized salary of the utility operations supervisor.

III. QUALITY OF SERVICE

Section 367.081(2)(a)1., Florida Statutes, and Rule 25-30.433(1), Florida Administrative Code, specify that in every rate case, we shall determine the value and quality of service provided by the utility. Rule 25-30.433(1), Florida Administrative Code, requires us to evaluate three separate components of water and wastewater utility operations: (1) quality of the utility's product; (2) operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction. Our analysis of each of the three components identified in Rule 25-30.433(1), Florida Administrative Code, is set out below.

A. Quality of Utility's Product

In this facet of the quality of service determination, we consider the quality of the utility's product and whether the water delivered to the customers' meters meets state and federal standards.

At the hearing, we heard testimony from 29 customers who were dissatisfied with the quality of service provided by Aloha. They complained of black or discolored water; odor/taste problems; low pressure; sediment/sludge; and the utility's response to customer complaints or inquiries. Many customers brought containers of discolored or black water to the hearing for viewing. Their testimony is summarized below.

Representative Fasano testified that Aloha delivers to its customers smelly, foul, dirty black water. He also alluded to the newspaper photograph which showed an Aloha fire hydrant spewing discolored water. He made reference to the fact that the black

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water problem had been on-going for years, was occurring in 1996 and before, and that complaints to his office still continue. The amount of complaints received amounts to reams and reams of paper.

Customer witness Oberg testified that the water in his house was dirty, occasionally turned gray, and smelled like rotten eggs. He also testified that the water in his toilet tank was black and some water he drained from his hot water heater was black.

Customer witness Hawcroft testified that the water he receives is foul smelling and discolored and causes stained laundry. His household uses bottled water. He stated that he testified about the very same water quality problems two years ago, and the problems remain the same.

Customer witness Kurien testified that he receives black water.

Customer witness Corelli also testified that the water he receives is not drinkable, is an inferior product and that he receives black water.

Customer witness Chestnutt testified that Aloha had never provided him with decent water.

Customer witness Hartinger testified that the water he receives is filthy, the water in a filter housing was black, and the filter itself was full of black grit. He further described the water as disgusting, vile, and foul smelling.

Customer witness Wood, also an intervenor to this proceeding, spoke about the corrosive nature of Aloha's water. He stated that copper pipe does not react to water in the plumbing system unless there is an acid contaminant in the water. He testified that the hydrogen sulfide is the culprit, and the water Aloha supplies is corrosive and is the cause of the black water. He also stated that the water was revolting.

Customer witness Bradbury testified that the water was black and smelly. He also referred to his soft water unit that failed after three years due to sludge buildup.

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Customer witness Bulmer testified that the water quality was poor.

Customer witness Wickett testified that he had received dirty water, and it had a pretty strong smell. He is forced to buy bottled water whenever he has company over to his house.

Customer witness Logan testified that he found a black greasy substance on the inside of his copper pipes. Also, when he filled his garden tub, there was black stuff floating in the water. He stated that he was sickened by the water and that it smelled like sulphur.

Customer witness Nowack testified that the water that came out of her kitchen faucet was black, greasy sludge. She said the quality of the water is the worst she has experienced in her whole life.

Customer witness Depergola testified that he received stinky, lousy, miserable water, and that when he took a shower his body smelled worse than before. He further stated that the water causes stained laundry, is not drinkable, smells, and is dirty. His pipes are filthy inside.

Customer witness Karas testified that the water was lousy, smelly, and nasty. It seems like it has rust, and, most of the time, you see a lot of black.

Customer witness Skipper testified that she did not drink the water nor bathe in it. It has a bad taste and a bad smell. The water turns her ice cubes yellow. She has a refrigerator with door water and ice, which she will not use.

Customer witness Legg testified that the water was black, very dirty, left an oily residue, and was always cloudy. If he does not use the water for a week and then turns it on, it will be brown and oily, but not to the extent of the first time that it happened.

Customer witness Whitener testified that she was unable to drink her water.

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Customer witness Rifkin testified that he received black, dirty, stinking water.

Customer witness Lewandowski testified that the water quality was poor.

Aloha, through a late-filed exhibit, submitted a summary of its attempt to contact all of the customers who complained about the quality of the water. Fifteen of these customers allowed an Aloha engineer to come into their home. At each home the engineer took samples of the water coming into the home and inquired of the customers where they had the most trouble inside their homes. These locations were used for the interior samples. Nowhere during any of the visits did Aloha's engineer see anything other than clean, clear water.

The engineers of the utility, OPC, and DEP all appear to agree that the black particulate in the water giving the water a black or grayish color is copper sulfide. They also appear to agree that the copper sulfide is formed by the reaction of hydrogen sulfide with copper pipes. However, the reason why some homes with copper pipes have a copper sulfide problem (black water), and others do not, is not as easily explained. For Aloha, the black water problems were initially concentrated in its Chelsea, Wyndtree, and Wyndgate subdivisions, but appears to be spreading to other subdivisions.

Hydrogen sulfide naturally occurs in much of the source water for Florida's utilities. The black water problem is not unique to the customers of Aloha and does occur in other areas of Florida. It is but one manifestation of a larger problem, that of copper piping corrosion that is prevalent in many parts of Florida. Witness Hoofnagle testified that black water had been found in the Ft. Myers area, and in Polk, Hillsborough, Pasco, Volusia, and Pinellas Counties. According to Mr. Hoofnagle, it appears that most of these events are episodic or have been resolved.

Utility witness Watford testified that the hydrogen sulfide in Aloha's source water is converted to sulfates by chlorination. Sulfates or elemental sulfur will not react with copper under normal conditions, and Mr. Watford claims that there is no sulfide coming through the customer's meter. However, once the water

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enters the customer's home, a multitude of things can cause the formation of sulfide. Utility witness Porter testified that the black water problem occurs in customers' home water piping. Aloha claims that the water delivered to Aloha's customers is pure, clean, color-free, odorless, and meets all State and Federal laws, rules and regulations.

The DEP witnesses agreed that copper sulfide occurs when elemental sulfur or sulfate in the water is converted biochemically in the customer's home from harmless sulfate and elemental sulfur to hydrogen sulfide, which can attack the home copper water piping and create copper sulfide which is the black substance reported by some of Aloha's customers. Factors necessary for the formation of copper sulfide include an energy source, time, temperature, sulfur reducing bacteria, and either sulfates or elemental sulfur. DEP witness Hoofnagle stated that the above conditions are found in both the customer's hot water heater, and the elemental sulfur or sulfates are introduced from Aloha's distribution system.

Aloha's water contains very small quantities of sulfate as it is delivered to the customer, varying from single digit values to the 20 to 25 mg/L level. The national drinking water standards allow 250 mg/L sulfate levels, so Aloha's water contains at most only one tenth of the national limit. DEP believes that the black water is being formed in the customer's pipes after the meter and that this formation of black water after the meter does not constitute a violation of drinking water standards.

Mr. Foster also testified that the finished water produced by Aloha meets all the state and federal maximum contaminant levels for primary and secondary water quality standards including the lead and copper rule. Also, Aloha's compliance with the lead and copper rule has led to a lessening of the monitoring requirements.

OPC witness Bidy disagrees with utility witness Watford's contention that no hydrogen sulfide is coming through the customers' meters. He believes that there is a varying concentration of hydrogen sulfide in the raw water, and that periodically you get much higher concentrations. He believes that when the high concentrations peak, all the chlorine is used up, and not all the hydrogen sulfide is converted to either harmless sulfates or elemental sulfur. Under these circumstances, he

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believes hydrogen sulfide is pumped directly into the system, through the customers' meters, and into the homes.

Witness Hoofnagle testified that there are a number of things the utility might study and implement to reduce or eliminate over time the black water problems now being experienced. There is no panacea or guarantees due to the complex nature of the water and corrosion chemistry and relatively unique specific conditions that are found in the customers' water. However, aeration with pre- and post-pH adjustment, added with alkalinity control has proven to be the most effective in other parts of Florida. Additionally there are emerging technologies that lend themselves to addressing the future Disinfection Byproducts Rule 62-550.821, Florida Administrative Code, as well, such as the MIEX system. This is a relatively cost effective solution. Since the black water problems do not appear in all of Aloha's service subareas, it is the DEP's belief at this time that a centralized treatment system would not be cost effective. Future and on-going engineering and cost studies need to identify technical solutions and their associated costs.

In late-filed Exhibit 3, staff witness Foster of the DEP presented a description of the tri-level water treatment process used by Pasco County to remove hydrogen sulfide and reduce the corrosiveness of the water. This process begins with cascade aeration to remove sulfides. After aeration, the water is sent to storage tanks containing a naturally-occurring bacteria. These bacteria convert hydrogen sulfide into elemental sulfur. The water is then chlorinated to remove bacteria and oxidize the remaining sulfide.

When asked what steps Aloha had taken to alleviate the black water problem, witness Foster testified that the utility was permitted on December 12, 1995, to use a polyphosphate corrosion inhibitor. However, some home treatment units can cause the corrosion inhibitor to be less effective. The units tend to remove mineral calcium, iron and magnesium, causing the water to become corrosive, and the pH is lowered.

Although some customers are dissatisfied with the taste, odor, and color of the water, witnesses Hoofnagle and Foster testified that Aloha meets the drinking water standards set forth by the DEP

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for water quality, and that the black water is created beyond the meter. We therefore find that the quality of Aloha's product is satisfactory.

It is apparent from the DEP testimony that Aloha has complied with all DEP rules regarding the quality of the water it produces for its customers. The method it has chosen, however, to meet this responsibility, i.e., the chemical conversion of sulfides to sulfates, has been shown to be reversible in customers' service piping and is one of the factors leading to the formation of black water. Even though Aloha has apparently met its legal obligation regarding water quality, we believe it should be taking a more proactive approach to dealing with the black water problem and responding to its numerous customer complaints about water quality.

Regarding a potential solution to the black water problem, witness Hoofnagle stated that if all the homes had chlorinated polyvinyl chloride (CPVC) piping there would not be a black water issue. When asked if there was anything else that would eliminate the black water problem, witness Hoofnagle stated that some form of water treatment to include aeration could greatly reduce the problem. Staff witness Foster, when asked if there was a mechanism, short of replacing the copper pipe, that would eliminate the black water problem, responded by calling the plastic pipe replacement a quick fix and, outside of that, he did not see an easy way of doing it. Utility witness Watford testified that a customer named Vento had his copper pipe replaced with CPVC and had never seen discolored water again.

Both witnesses from DEP were asked to state what they believed to be the solution to the black water problem and neither cited anything as a final solution except for the replacement of the customers' copper pipe with CPVC. Witness Hoofnagle testified that forms of water treatment would only reduce the problem and stopped short of saying that additional treatment of the water would eliminate the problem. It appears that at least a very large part of the solution to the black water problem in the Aloha service area is the replacement of the customers' copper service pipes with non-copper pipe. However, notwithstanding this, we believe that Aloha's chosen treatment method of converting hydrogen sulfide to sulfate or elemental sulfur through chlorination has not proven to be an adequate remedy. Moreover, Aloha's use of ortho-

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polyphosphates has not proven to be an adequate remedy. Therefore, Aloha shall be required to take additional measures to correct this "black water" problem:

B. Operational Conditions of the Plant

In this facet of the quality of service determination, we consider the operational conditions of the utility's plant facilities, and whether the plant facilities meet DEP standards and are functioning properly.

Utility witness Watford testified that Aloha utilizes chlorination to convert the hydrogen sulfide in the raw water to the sulfate form. Utility witness Porter testified that Aloha also uses an orthopolyphosphate corrosion inhibitor. Aloha's use of a corrosion inhibitor has resulted in a lessening of the monitoring requirements under the lead and copper rule.

Four of the customers who testified complained about low pressure. One of these customers stated that his pressure was low constantly, and was not adequate compared to other places he has lived.

Staff witness Foster testified that the Aloha water system meets all current DEP standards for a drinking water system including the maintenance of the required minimum pressure, quality of the finished water, monitoring, required chlorine residual, certified operators, and auxiliary power. The system is generally in compliance with all applicable DEP rules. Also, Aloha's corrosion inhibitor program was approved by DEP on December 12, 1995. Witness Foster further testified that the chemical analyses of Aloha's finished water indicates no need for further treatment.

Staff witness Hoofnagle testified about fire hydrant flushing. He stated that how often a hydrant should be flushed varies tremendously. He further testified that DEP encourages utilities to flush lines through the hydrants and that it is a standard practice.

The record shows that the utility is meeting standards set forth by the DEP for operating conditions of its plants, as evidenced by the testimony of DEP witness Foster as well as by

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utility witnesses Watford and Porter. Therefore, we find that the operational condition of the plant is satisfactory.

C. Customer Satisfaction

In addition to the customer testimony summarized above, we heard testimony from customers about the level of customer service received from the utility. Customers testified for the most part about discolored or black water. There were some complaints of undesirable taste and odor, and insufficient pressure. Some customers testified about the attitude of the utility. This testimony is summarized below.

Representative Fasano testified about Aloha's defensive attitude and lack of helpfulness. He characterized the service as poor and pointed out what he believed to be an effort by Aloha to intimidate its customers into not participating in the legal process. This effort was a newsletter in which Aloha stated that if an appeal of a Public Service Commission order was pursued, it would cost the utility hundreds of thousands of dollars, the cost of which would be passed on to the customers. Representative Fasano reported this newsletter to the Commission and was told that Aloha's claims of potential legal costs were not so exaggerated as to be deceptive. He also characterized Aloha as a company who does not care about its customers.

Customer witness Stingo testified about the expense of installing an irrigation meter. He believed that the water distribution system as it was installed should not have been allowed and caused the installation of an irrigation system to cost more money than it should have.

Customer witness Marden testified about a damaged fire hydrant, and his concerns about fire protection and safety. In late-filed Exhibit 37, Aloha stated that it repaired the hydrant on January 10, 2002.

Customer witness Kurien testified that we should not be bullied by Aloha's claims of meeting DEP standards.

Customer witness Shepherd testified that he believed that Aloha was engaged in foot dragging as a response to water problems.

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Customer witness Lane testified that he was in agreement with Representative Fasano about the intimidating newsletter, and that Aloha is not responsive to customer complaints. He stated that when he called to complain about weak pressure, the utility came out, measured it, and said that the existing pressure meets the standard, and that is all they can do. Mr. Lane believes that this was not responsive.

Customer witness Wood testified that Aloha's service is substandard and totally unsatisfactory.

Customer witness Nowack testified that Aloha is very rude to her and to its customers. She also stated that Aloha hangs up on her.

Customer witness Skipper testified that she had written Aloha a letter in the summer and had not gotten any response from them at all.

Customer witness Rifkin testified that he wrote on his bill a note to Mr. Watford that the water is dirty, black, and stinking. Mr. Rifkin never received a response to the note.

Customer witness Lewandowski testified that every time he has called Aloha, they have been nothing more than arrogant, egotistical prima donnas.

Customer witness Brown had questions about how the sewer rate was calculated on his bill and also expressed concerns over Aloha's brand new vehicles. He also had concerns about Aloha's threatening newsletter concerning legal costs being passed on to the ratepayers.

We also heard testimony from the parties concerning customer service. OPC witness Larkin testified that Aloha's water quality does not meet a competitive standard and in a competitive environment would be rejected by customers. It was only because Aloha was a monopoly that it could get away with this level of service and that this Commission must act as a true substitute for competition. He stated that, in a previous docket, there was overwhelming evidence that a vast number of the Seven Springs water customers found Aloha's overall product and service to be

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completely unacceptable. Further, based on the customer testimony that has been presented in the two recent Aloha dockets, vast numbers of customers would go elsewhere if they had a choice. He stated that he has never encountered a higher level of customer dissatisfaction, and that in a competitive environment, Aloha would not be able to raise prices because the quality of its water is below comparable service from other water companies.

Staff witness Durbin testified that during the period between January 1, 1999, and October 31, 2001, the Commission logged 193 complaints against Aloha Utilities. This number of complaints constituted the highest number of complaints per 1,000 customers of any of the similarly sized water and wastewater utility companies reviewed. The similarly sized companies included other Class A and B water and wastewater companies in Pasco County plus other selected Class A companies outside of Pasco County. The review indicated that Aloha had 15.16 complaints per 1,000 customers for the period January 1, 1999, through November 13, 2001. The other companies reviewed ranged from a low of .024 complaints per 1,000 customers by Florida Cities Water Company - Lee County Division, to a high for the other companies of 13.45 complaints per 1,000 customers by Jasmine Lakes Utility Corporation.

Mr. Durbin testified that two of the complaints involved an apparent violation of the Florida Administrative Code or the company tariff. Of these two, one was a complaint in which it appeared that the company had sent the customer an improper bill. The other apparent violation concerned a delay in connection of service in a timely manner. Mr. Durbin testified that the two most common complaints involved high water bills and water quality concerns, including black water complaints. Witness Durbin further testified that Aloha provided a timely response in 92% of the cases that were filed in 1999, 2000, and year-to-date 2001.

Utility witness Watford also testified as to customer satisfaction and stated that the two cases where the utility was found to have done anything wrong averaged out to less than one complaint per year. He believes this to be a very good record. Mr. Watford also testified about the late responses. For five of the alleged eleven late responses, Aloha contends that it was not late in providing a response. In one particular case, he stated that Aloha has a facsimile confirmation that it did in fact file a

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response on the due date. Aloha then sent a confirmation the next day. This second submission was apparently incorrectly logged in as Aloha's response.

In four other cases, Mr. Watford contends that the complaint was sent to Aloha's old fax number after it had moved to its new offices. After finding out about the complaints Aloha asked that the complaints be resent to the new number. In each of these cases, Aloha contends they filed a response in less than the normal 15 days. In at least three of the alleged late response cases, Aloha contends that the Commission's facsimile machine failed to accept a faxed response so it was sent by mail on the due date. Based on these explanations, Mr. Watford testified that he believed there were zero late responses that were not justified.

In addition, witness Watford testified that because witness Durbin did not review the other utilities cited as comparable to Aloha to determine if they were involved in rate proceedings during the time analyzed, that Mr. Durbin's testimony was flawed. Also, no attempt was made to segregate water complaints from sewer complaints, and the period of time chosen for analysis was questionable. For these reasons, he believed that Mr. Durbin's analysis was not a fair representation of Aloha's customer complaint level. Witness Watford also cited this Commission's management audit of Aloha, which stated that Aloha's customers are generally satisfied with Aloha's customer service.

We have reviewed the management audit conducted by our staff, and note that it was based on a very limited number of samples over a very short period of time. As stated in the report on page 19: "The four-question survey was a snapshot of one week of service requests originated during the week of September 26 through October 2, 2000. Staff randomly contacted a judgement [sic] sample of 37 of the 209 customers having interaction with Aloha during the designated period." Even the staff who conducted the audit acknowledged that the survey sample size fell short of being statistically valid. The record shows that the conclusions of the management audit staff that Aloha's customers were generally satisfied with service, timeliness of response and overall handling of customer requests is inconsistent with the multitude of customers who testified almost in one voice about Aloha's poor

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quality of service and the unresponsiveness of Aloha to consumers' complaints.

We find that a significant number of customers have been receiving "black water" from Aloha for over six years, and it is past time for Aloha to do something about it. While the water quality provided meets the DEP standards at the meter, the presence of hydrogen sulfide in the raw water that is converted to sulfates and back into sulfides is not acceptable because this conversion process is one of the factors leading to the creation of copper sulfide in the customers' water. This copper sulfide is the black substance in the water causing the water to be either black or gray in color. Even though Aloha complies with DEP's Lead and Copper Rule, a significant number of Aloha customers experience corrosion in their service piping, which leads to the formation of copper sulfide in their homes.

We also find that a large number of customers had complaints about Aloha's attitude in dealing with its customers. We heard testimony that the utility was arrogant, egotistical, very rude, unresponsive, and acted like prima donnas.

A significant portion of the customers are clearly dissatisfied with Aloha's overall quality of service, and have been for some time. Therefore, we find that the utility is not providing good customer service and the quality of customer service provided by Aloha is unsatisfactory.

Aloha has violated its water use permit with SWFWMD starting in 1994, and consistently since 1996. In addition, Aloha's customers have complained about black water since at least early 1996. Any actions that Aloha has taken to eliminate these problems have come about in response to requirements made by governmental authorities. Moreover, the actions that Aloha has taken have been slow-moving and ineffective. Because of Aloha's long-term problems with black water and other water quality complaints, long-term violation of its consumptive use permit, its lack of a proactive approach to finding acceptable solutions to these problems, and the customer complaints about the attitude of the utility, we find that the overall quality of service provided by Aloha is unsatisfactory.

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minimal efforts, the "black water" problem has continued to persist for a significant number of customers since 1996, if not before.

1. Solution to Copper Sulfide Problem

For those customers experiencing "black water," the only absolute "fix" appears to be repiping with CPVC. However, another possible solution is the removal of almost all hydrogen sulfide. While the utility has proceeded with the pilot project as ordered by this Commission and has provided monthly reports as required, the pilot project has lasted for over 18 months, and the record shows that there has been little progression with it since July 2001. The utility states that it is just now ready to begin the final stage of the pilot project, and that the final stage is projected to last anywhere from six to twelve months. We acknowledge that the need for alternate sources to increase the utility's water supply and the possibility that Pasco County may adopt a chloramine process have complicated the utility's search for a process that will correct the "black water" problem and remove hydrogen sulfide from the water. Nevertheless, it is past time for Aloha to take decisive action.

We further note that DEP witness Foster testified that Pasco County had a hydrogen sulfide problem in its water and installed a treatment system to deal with it. According to witness Foster, he has never seen a problem with black water in the county. We believe that if Aloha had committed themselves to a more proactive approach to this problem, and this type of problem having already been addressed by the County, that Aloha had the opportunity to prevent the situation from becoming as bad as it is and possibly eliminate it entirely.

As an initial step to combat the "black water" problem, we note that shortly after Wells Nos. 8 and 9 were placed into service in late 1995, the complaints on "black water" sky-rocketed. OPC witness Bidy suspects that Wells Nos. 8 and 9 have hydrogen sulfide spikes. Also, those wells are the closest to the subdivisions experiencing the worst "black water" problems. Although Aloha's Seven Springs water system is totally interconnected, we believe that any solution to the "black water" problem must begin with Wells Nos. 8 and 9.

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By Order No. PSC-00-1285-FOF-WS, we required Aloha to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes. Based on the above, the utility shall make improvements starting with Wells Nos. 8 and 9, and then to all of its wells, to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. Such improvements to all of the utility's wells shall be placed into service by no later than December 31, 2003. Moreover, Aloha shall submit a plan within 90 days of the date of the Final Order in this docket showing how it intends to comply with this requirement to remove hydrogen sulfide.

2. Return on Equity Set at Minimum

Based on the above, and after considering the value and quality of the service, we find that the utility's rates shall be set to give it the opportunity to earn the minimum of its authorized rate of return in accordance with Gulf Power. We have set the rates at the minimum of the range of return on equity because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries. Our actions are consistent with past decisions in this regard. See Order No. 14931, issued September 11, 1985, in Docket No. 840267-WS, Order No. 17760, issued June 28, 1987, in Docket No. 850646-SU, Order No. 24643, issued June 10, 1991, in Docket No. 910276-WS, and Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS.

3. Reduction to President's and Vice-President's Salary

Also, we find the continuing problems with "black water" over at least the last six years, the customers' dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility. Therefore, based on this poor management and mismanagement, the amount allowed for salaries and benefits of both the President and Vice-President shall be reduced by 50%. Based on this adjustment and noting Stipulation No. 13 (double counting of



PASCO COUNTY, FLORIDA

DADE CITY (352) 521-4274
LAND O'LAKES (813) 996-7341
WEST PASCO (727) 847-8115
FAX (727) 815-7010

COUNTY ADMINISTRATOR'S OFFICE
WEST PASCO GOVERNMENT CENTER
7530 LITTLE ROAD, SUITE 340
NEW PORT RICHEY, FL 34654
E-MAIL: padmin@pscocoountyfl.net

Hand Delivery

May 14, 2004

Roseanne Gervasi, Senior Attorney, and
John Williams, Senior Analyst
Office of the General Council
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0863

REGULATION

04 MAY 17 AM 7:59

RE: Docket #020896-WS – Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County

Dear Ms. Gervasi and Mr. Williams:

Please accept this letter as Pasco County's response to your May 10, 2004, letter. We are pleased to be able to provide information that may assist the Florida Public Service Commission (FPSC) in a resolving a matter important to the citizens of Pasco County.

For clarity, we have quoted your questions in italics below, followed by our response.

Question 1: Has the County offered to purchase Aloha Utilities, Inc. (Aloha)?

Answer: As part of a Board of County Commissioners initiative, we contacted all of the private water and wastewater utilities in Pasco County about selling to the County. We have enclosed our original "Letter of Interest" dated July 20, 2000, and the Aloha Utilities response letter dated May 26, 2001. The Aloha response states in part "the owners are simply in no way interested in even discussing with Pasco County the potential sale of their system."

Question 2: Would the County be willing to purchase all or a portion of Aloha if the Florida Public Service Commission were to determine that Aloha is unwilling or unable to provide adequate service to all or to a portion of its currently certificated territory?

Answer: Assuming the Aloha system or a portion of it was for sale, Pasco County is ready, willing and able to pursue a purchase. As outlined in our July 20, 2000, letter, we have previously established a standard protocol with terms and conditions for such a purchase. (Our detailed Terms and Conditions sheet is also attached). The Board

Roseanne Gervasi, Senior Attorney, and
John Williams, Senior Analyst
May 14, 2004
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of County Commissioners on May 11, 2004, discussed the issues surrounding Aloha and directed me to respond to your questions. As you know, numerous legal issues arise regarding the customers' petition for deletion. Legally, a transfer of utility customers or service area can only occur under certain scenarios: (1) a willing sale by the utility owner; (2) exercise of the power of eminent domain; (3) a lease arrangement; or (4) a court ordered sale from a receivership to the highest bidder after the utility owner has abandoned the utility or the PSC has revoked the certificate(s) to operate causing an abandonment.

Question 3: Has the County made any plans to provide water and wastewater service on a retail basis in the Seven Springs – Trinity areas of the County?

Answer: We have not developed any plans to provide retail service within the certificated service area of Aloha Utilities, nor do we think it proper to make plans to serve any area that is currently being served by another utility. However, we currently provide retail water and wastewater services to our customers in the Seven Springs/Trinity developments, which are adjacent to Aloha's certificated service area.

Question 4: Please provide a brief description of what would be involved in running lines to serve those customers.

Answer: Assuming that ownership of the system would be legally transferred, water transmission mains or wastewater collection systems could be run from Pasco County's nearby mains to interconnect with the existing pipes connecting the individual homes within the area that would be served. We cannot at this time, however, describe the infrastructure needed without additional information about the areas that may be served. Generally, when we have legal authority to serve an area, we would conduct a hydraulic modeling analysis to determine line capacities and thereafter prepare a preliminary design of line extensions or any necessary upgrades of our existing lines.

Question 5: Does the County have any plans to use its eminent domain powers to acquire all or a part of Aloha?

Answer: No. It is the policy of Pasco County to pursue the acquisition of private utilities only when the utility is willing to transfer ownership.

Question 6: Have the Pasco County Commissioners directed their staff to evaluate the feasibility of providing utility services to the Seven Springs – Trinity areas of the County that are currently served by Aloha?

Answer: No, however, the Pasco County Board of County Commissioners, has indicated a willingness to assist the PSC in this matter. Furthermore, we do not have enough information regarding the area that is the subject of the petition to perform an evaluation.

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ATTACHMENT B

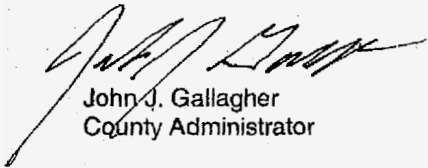
Roseanne Gervasi, Senior Attorney, and
John Williams, Senior Analyst
May 14, 2004
Page 3

Question 7: Please provide an estimate of the costs the customers would incur in order to connect to the County's water and/or wastewater system.

Answer: As explained in the response to Question 4 above, the County is not able to determine specifically what would be involved for the County to provide service to those certain customers if the County were to purchase the portions of the Aloha system that serve those customers since the particular physical area contemplated by the subject petition for deletion is not clear. Accordingly, costs cannot be estimated.

If you have any comments or additional questions, please contact us.

Sincerely,



John J. Gallagher
County Administrator

JJG/lb

cc: The Honorable Michael Fasano, Representative, House of Representatives
Steve Watford, Aloha Utilities, Inc., 6915 Perrine Ranch Road, New Port Richey, FL 34655
Pasco County Board of County Commissioners
Robert D. Sumner, County Attorney
Douglas S. Bramlett, Assistant County Administrator (Utilities Services)



PASCO COUNTY, FLORIDA

OFFICE OF THE COUNTY ATTORNEY

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County Attorney

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Chief Assistant County Attorney

W. Elizabeth Blair
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Patricia J. Hakes
Sidney W. Kilgore
Richard T. Tschantz
Debra M. Zampetti

July 20, 2000

Mr. Stephen G. Watford
President
Aloha Utilities, Inc.
2514 Aloha Place
Holiday, Florida 34691-3499

Re: Water and Sewage Utility System

Dear Mr. Watford:

This office has been advised that Aloha Utilities, Inc. is the owner of a private water and sewage utility system.

This letter is to advise you that I have been instructed by the Pasco County Board of County Commissioners to determine whether you have any interest in selling your utility company to Pasco County.

Any purchase by the County would require the acquisition of all of the assets of your company as well as its service area. The general limits of any agreed purchase price of the system would be as follows:

1. The water and sewage system must meet or exceed all Department of Environmental Protection and all other regulatory standards and requirements, and if not, sufficient monies will be withheld to bring the system up to current standards.
2. There will be no value placed upon the system, which would place any value on future connections to the system.
3. The rates for water and sewage as approved and established by the Public Service Commission must be sufficient to provide adequate reserves and retirement of revenue bonds over a 20-year period of time at current interest rates or those rates in effect at the time of the sale of the bonds and purchase of the system.

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ATTACHMENT B

July 20, 2000
Re: Water and Sewage Utility System
Page Two

4. The value established must be verified by engineering and appraisal reports by a professional approved by the County.

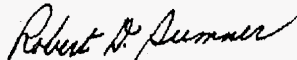
5. Complete in detail the attached questionnaire. Please note that in order for any interest to be expressed as to the sale of the system, it is necessary that I receive a response to this letter within sixty (60) days from the date of this letter.

6. Certify that the information contained in the questionnaire is true and accurate to the best of your knowledge and belief.

7. Return the completed questionnaire to Douglas S. Bramlett, Assistant County Administrator, Utilities Service Branch, Public Works/Utilities Building, Suite 213, 7530 Little Road, New Port Richey, Florida 34654-5598.

Please feel free to call me to discuss this matter.

Very truly yours,



Robert D. Sumner
County Attorney

RDS:lp
Enclosure

cc: Douglas S. Bramlett, Assistant County Administrator, Utilities (w/enclosure)

**The Following Is a Questionnaire Which We Request That
You Complete and Return to Pasco County If You Are Interested.
In Purchase of Your Utility System by Pasco County**

1. What is the current name and address of your utility?

2. Provide the Florida Public Service Commission Permit or License Number. Also, include the latest annual report which states your base rate value of the utility and your PSC approved user charge schedule.

3. Provide copies of the current Florida Department of Environmental Protection (FDEP) operating permit for your wastewater treatment and potable water plants.

4. Provide copies of any and all FDEP citations, warning letters, notices of violation, or consent orders in the past ten years.

5. What is your current number of customers as listed below:

Single Family	_____	Industrial	_____
Multifamily	_____	Commercial	_____
Mobile Home	_____	Medical	_____
Recreation Vehicle	_____		

6. If you have established a purchase price to be considered by Pasco County, provide in detail the method of value you used and your engineering analysis of current conditions of the system.

7. Provide in detail all engineering drawings and plans which show the following items:
 - Miles or feet of all water mains, gravity sewer mains, and force mains and all diameters of pipe.
 - Number and locations of all sewer manholes, pump stations, valves, pressure-relief valves, and all service laterals.
 - Number and locations of all water meters, backflow prevention devices, valves, and service laterals.

8. All logs, information, and letters on file which provide the type and number of citizen complaints over the past five years.

9. Provide a printout of all customer accounts which shows payment history and delinquent accounts over the past two years.

10. Provide a list of current employees and their respective positions and responsibilities.

11. Provide detailed information of any utility debts owed, mortgages, liens, etc., and the names and addresses of such debt holders.

PASCO COUNTY
PRELIMINARY TERMS AND CONDITIONS FOR UTILITY ACQUISITION

I. DUE DILIGENCE EVALUATION

1. All contracts, customer service agreements, developer agreements, and other agreements for service shall be provided to County. If a contract is non-assignable, the Utility shall provide a listing of all such contracts and agreements and note specifically which ones will be assigned to the County at closing.
2. Utility shall allow County to perform inspections of the assets and have access to records that will assist the County in its acquisition. Such inspections include, but are not limited to, Engineering and Financial Due Diligence and Environmental Site Assessments on the assets a shall occur prior to execution of the terms and conditions for purchase. The Utility shall provide, at no cost to the County, information required to perform such utility inspections. Such information includes but is not limited to:
 - Record Drawings/Site Plans
 - Detailed Service Area Map
 - Developer/Service Agreements with all third parties
 - Utility Rate Tariff (current and prior)
 - Four years Annual Reports filed with the FPSC
 - Fixed Assets Listing, including details regarding General Plant
 - Operating/Construction/Water Use Permits and any regulatory order or action items
 - Listing of Employees by Title and total compensation, including benefits
 - Listing of insurance coverage on facilities
 - Billing register/Account History by Rate Code and any bill frequency reports prepared by Utility
 - Capital Improvement Plan and information regarding construction work in progress
3. Forty-five days prior to closing a specific listing and information concerning all vendors, vendor accounts, corporate name, location and billing addresses, account status as contracts outstanding (dollars), amount spent to date, accounts payable and due, and any agreements for vendors to provide services shall be provided by Utility to County.

II. UTILITY TRANSACTION REQUIREMENTS
County Responsibilities

4. County shall pay for documentary stamps, and recording costs.

5. County shall pay for Environmental Site Assessments.
6. The County will be responsible for the preparation for and presentation of the public hearing required by Chapter 125, Florida Statutes and that both the County and Utility will attend a customer meeting (public) prior to the public hearing to present the plan of acquisition for customer input and support.

Utility Responsibilities

7. Utility must renew all expired permits or correct system deficiencies in such permits if there is a regulatory order or demand in existence. Utility transfers all permits and rights associated with such permits to the County. Deficiencies could be corrected by connection to the County system(s) at time of closing or as a condition of closing, which will be considered a capital deficiency and reflected in the purchase price determination.
8. Utility shall satisfy all liens, encumbrances and/or title problems prior to date of closing to assure the County of free and clear title.
9. Utility representatives will conduct themselves in an appropriate fashion through transfer, will operate the system in compliance with all regulatory agencies, and will not reduce the value of the Utility in any manner through the date of transfer.
10. Utility staff will be available for transition activities for up to six months after the closing. Availability shall mean, specific staff, will be identified by name, address telephone number and each specific staff member shall be so employed or contracted to be available on-site within a two hour notice of need.
11. Utility shall provide for a minimum of one month materials, supplies, and consumables to be transferred to the County at closing to provide for the continued operation of the Utility without a change in level of service or impacting regulatory compliances. Utility shall provide a listing of such materials, supplies and consumables and amounts of each 30 days prior to closing and the amounts shall be field verified by County at closing.
12. Utility shall pay its taxes including payroll, property, intangible, and income taxes up to and including closing.
13. Utility shall maintain insurance and shall indemnify County up to and including closing.
14. Utility represents it has proper authority to sell utility assets.

15. That rolling stock, moveable equipment, laboratory equipment, tools, accessories, and appurtenances shall be inventoried and delineated by Utility as to which items would be paid for by and transferred to County.
16. Utility shall disclose any and all litigation and legal actions to which it is a party. The dispensation of such litigation and legal actions shall remain the liability of Utility.
17. Utility shall petition for the transfer of the FPSC certificate. The cost of such transfer shall be paid by Utility.
18. Utility shall assist County in obtaining the transfer of all permits. The cost of such transfers shall be paid for by the County.
19. Utility shall pay for title search and title policy and other costs of closing.
20. One Hundred Twenty (120) days prior to closing, Utility shall provide for a complete billing register and billing information of the customers of the system in File Transfer Protocol (FTP) format. Utility shall cooperate with the County to integrate the billing information into the County's system.
21. Utility shall pay for surveys and legal descriptions for the real property assets and other investigation necessary for closing.

III. UTILITY TRANSACTION ACTIVITIES

22. County pays Utility \$_____ cash at closing.
23. Bill of Sale provided for all assets.
24. All necessary easements, land rights, or other utility rights transferred which are necessary for the operation and maintenance of the utility system shall be transferred to the County.
25. A minimum of 10% of the purchase price will be held in escrow for 18 months after closing. County may utilize such escrowed funds to correct latent defects after closing. Such defects shall be defined as a hidden, not apparent or unobserved defect. Such defect may be the result of faulty of substandard material, manufacturing, construction, pollution or other reason that existed prior to the closing date. Substandard material shall be defined as materials that are not in accordance with Pasco County, FDEP, AWWA, and WEF standards latest revision for water and wastewater utility systems.
26. The value of outstanding prepaid connections shall be deducted from the purchase price, which will be inventoried and accounted for prior to closing. The Utility shall provide an accounting of all reserved but unused capacity and whether

supported by the reservation analysis to any outstanding developer agreements and to the provision of such developers paying guaranteed revenues to hold such capacity.

27. All customer deposits will be transferred at closing which will include any interest earnings accrued on each customer deposit.
28. Accounts receivable at closing will be collected by County and transferred back to Utility for a period of ninety (90) days after closing. The County shall read all meters at the time of closing to establish a clear line of ownership of the revenues.
29. All vendor invoices incurred (billed or unbilled) for services rendered or attributable to the Utility prior to closing will be the responsibility of the Utility except for services which are incurred in a period which crosses owners will be allocated on a prorated basis.
30. The transaction is an asset purchase. Any debt, liability, balance of loan payment, or other instrument of indebtedness shall remain the sole liability of Utility.
31. Transaction is on an "as is, where is" basis, subject to modifications from the latent defect escrow account.
32. Each party shall pay for their own representative fees and costs associated with the acquisition due diligence, preparation and execution of purchase and sale documents, and closing costs.
33. It is contemplated that no construction work in progress will be on going at the time of closing. To the extent that such construction projects are necessary for the continued proper operation and management of the system, such projects shall be delineated by Utility. Utility shall be responsible for the completion of such projects and full payment of all contractor invoices or alternatively the Utility shall provide complete funding for the completion of the project to the County.
34. The terms represent a memorandum of understanding between the parties but are not a contract for the purchase of the Utility by the County and the County shall not be bound by these terms and conditions until final execution of a contract by the County.
35. All records, reports, drawings, and related documents for the management, operation, and service to customers in the Utility's total service area, including all record drawings and operations and maintenance manuals shall be provided to the County. All accounting information shall also be provided which shall at a minimum include the following:
 - General ledger of the Utility at year end and most recent month
 - Fixed assets listing at year-end and most recent month
 - Payroll records for employees

- Schedules of property, plant and equipment insurance
 - Information of property taxes and other taxes other than income
 - Copy of last four years of annual reports submitted to the Florida Public Service Commission (FPSC)
 - Listing of prepaid expenses
 - Summary and reconciliation of all cash accounts
 - Supporting documentation of specific expense items
 - Copies of last four years Federal income tax forms
36. The Utility is not a foreign person as defined by US tax laws.
37. Except as disclosed by Environmental Site Assessments, the Utility has not violated federal, state, or local pollution laws

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of section 367.111(2), Florida Statutes.	DOCKET NO. ORDER NO. ISSUED:
---	------------------------------------

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

SHOW CAUSE ORDER

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. Approximately 1,800 customers in the Seven Springs area filed petitions in Docket No. 020896-WS for deletion of territory from Aloha's certificate of authorization due to alleged poor quality of service. By Order No. _____, issued _____, in that docket, this Commission granted Aloha's Motion for Termination of Proceedings as They Relate to Deletion of Territory, and closed the docket.

The four deletion petitions related to the following areas included within Aloha's Certificate No. 136-W: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. This order addresses whether Aloha should be required to show cause as to why those portions of its certificated territory should not be deleted from its Certificate No. 136-W for failure to provide sufficient service consistent with the reasonable and proper operation of the utility system in the public interest, in apparent violation of section 367.111(2), Florida Statutes. We have jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

FINDINGS OF FACT

On or about September 9, 1996, testimony was first taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha, due, in large part, to a "black water" problem. Hundreds of customers attended the hearing. By Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WU, this Commission found that "it is obvious that the customers are dissatisfied with the quality of water which Aloha is providing, have been unhappy with the water for many years, and do not trust the utility." By that same order, we noted that even though Aloha is in compliance with state and federal drinking water standards, customers from many areas within Aloha's service territory have stated that their water is aesthetically objectionable, smells bad, tastes bad, and in some cases reacts with copper plumbing, turning the water black. We found Aloha's quality of water service to be unsatisfactory and required Aloha to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water to address the "black water" problem.

On or about March 29, 2000, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again, hundreds of customers attended the hearing. Approximately 50 customers testified about black or discolored water, odor/taste problems, low pressure, and/or deposits/sediments in the water. By Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, we found the overall quality of Aloha's service to be marginal and required Aloha "to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes." By Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS, we clarified that Aloha "shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes."

On or about January 9, 2002, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again customers testified about the "black water" problem, as well as about dissatisfaction with the taste and odor of the water, insufficient water pressure, and Aloha's poor attitude towards its customers. By Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU and affirmed on appeal by the First District Court of Appeal (rate case order), we found that the methodology chosen by Aloha to alleviate the "black water" problem, including the use of a polyphosphate corrosion inhibitor along with the conversion of hydrogen sulfide to sulfate or elemental sulfur through chlorination, had not proven to be an adequate remedy, and required Aloha to take additional measures to correct the problem.

We also set Aloha's rates at the minimum of the range of return on equity "because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries," and reduced the amount allowed for salaries and benefits of the Aloha's President and Vice-President by 50%

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upon finding that “the continuing problems with ‘black water’ over at least the last six years, the customers’ dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility.” Moreover, we found that had Aloha committed itself to a more proactive approach to the “black water” problem, it could have prevented the situation from becoming as bad as it is and possibly could have eliminated it entirely. We again found the overall quality of service provided by Aloha to be unsatisfactory, and required the utility to implement, within 20 months, a treatment process for all of its wells, starting with well nos. 8 and 9, that is designed to remove at least 98% of the hydrogen sulfide in the raw water. Because Aloha appealed the rate case order, the requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed. The new date to implement a solution to the “black water” problem became, and remains, February 12, 2005.

On April 8, 2004, this Commission conducted two more customer service hearings to obtain customer views on an independent audit report of Aloha’s processing plant and methodology that had been requested by the first deletion petition filed in Docket No. 020896-WS. Approximately 200 customers attended each session and numerous customers testified. Virtually all of the customers elected not to address the specifics of the audit report and the treatment options proposed therein, and instead stated that they wished to be deleted from Aloha’s service area in order to obtain service from Pasco County due to the continuing “black water” problem and the poor quality of service they receive. Many carried picket signs into the hearing room which read “Better Water Now!”

By Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU, we found that the removal of 98% of the hydrogen sulfide standard appears not to be attainable for all of Aloha’s wells, due to low concentration of hydrogen sulfide in some of the wells. We therefore proposed to modify that standard to require that Aloha “make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility,” and required the implementation of certain measures to assure compliance with this goal.

Aloha has chosen to implement a process involving the introduction of hydrogen peroxide (H₂O₂) to combat the “black water” problem, which is a process suggested in the audit report. However, while H₂O₂ has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. According to Aloha and the independent auditor, the science suggests that this methodology will be effective for that purpose, but the science has not been proven in a full-scale utility operation. Numerous customers have expressed concern about the experimental nature of the H₂O₂ treatment methodology, and certain customers have protested portions of our proposed modification of the rate case order as a result of those concerns. A hearing to resolve the protest is scheduled to commence on March 8, 2005.

Additionally, our staff has mailed a survey to the customers who reside, or own property, in the four areas that customers have petitioned for deletion of territory, asking whether those customers are in favor of the Commission approving the deletion petitions and whether they have

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a black water problem at their premises. The survey response rate is approximately 49% to date. The results of the survey preliminarily show that 81% of the respondents favor deletion, 9% do not favor deletion, and 10% do not know whether they favor deletion or not. 64% of the respondents state that they have a black water problem at their premises. 59% of the respondents who indicated that they did not have a black water problem at their premises still favored deletion, indicating a more systemic problem with the utility than just a "black water" problem. 59% of the respondents provided additional comments. Of these, 63% complained of other quality of service issues, including the quality of the water, water pressure, and customer service, and 14% stated that they have found it necessary to purchase bottled water or filters, or they have abandoned the use of their saunas or bathtubs. Only 2% of the comments provided by Aloha's customers indicated that they had no problems with Aloha's service.

Nineteen customers who had petitioned for deletion of territory prefiled testimony in Docket No. 020896-WS on November 18, 2004, in accordance with the Order Establishing Procedure issued in that case. In their prefiled testimony, some customers stated that they have experienced pinhole leaks in their copper piping, and many stated that they believe the customer service from Aloha is not satisfactory. Many of these customers stated that they have water softeners and/or water filters. All nineteen customers who prefiled testimony in that case stated that they experience poor water quality and wish to receive water from another utility.

CONCLUSIONS OF LAW

Section 367.045(5)(a), Florida Statutes, provides, in relevant part, that

[t]he commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest.

Section 367.045(6), Florida Statutes, provides that "[t]he revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days' notice before it initiates any such action." Read together, these statutory provisions clearly provide that this Commission may amend a certificate of authorization to delete territory, if in the public interest, so long as it provides 30 days' notice before initiating the action. We have provided the requisite notice.

Section 367.111(2), Florida Statutes, provides, in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for this Commission to delete the territory that is insufficiently served. Although it appears that Aloha is in compliance with the drinking water standards imposed by the Department of Environmental

Protection (DEP), the facts and findings set forth above support the initiation of a deletion proceeding against Aloha.

In determining whether it is in the public interest to amend a certificate of authorization, this Commission addresses, among other things, the financial and technical ability of the utility to provide adequate service. As discussed above, we have been plagued for many years with complaints from numerous of Aloha's customers concerning the quality of water that Aloha provides, and questioning Aloha's ability to provide adequate service.

Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes, or the Commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. In failing to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, Aloha's act was "willful" within the meaning and intent of section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

The findings of fact outlined above show that: 1) Aloha has violated its statutory obligation under section 367.111(2) to provide sufficient water service by providing water with unacceptable color, taste and odor, by failing for over eight years to take proactive steps to remedy the situation, and by failing to improve upon customer relations; and 2) it is in the public interest for this Commission to delete the following insufficiently served areas from Aloha's Certificate No. 136-W, contingent upon provisions being made for an alternative service provider to be in place: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. The Commission reserves the option to impose a monetary penalty in addition to or in lieu of revocation if it concludes after hearing that such action is in the public interest. Therefore, we find that a show cause proceeding is warranted at this time.

Pursuant to sections 367.161 and 120.60, Florida Statutes, Aloha is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of

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section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation.

Aloha's response to the show cause order must contain specific allegations of fact and law and comply with the requirements of Rule 28-107.004(3), Florida Administrative Code. Should the utility file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, further proceedings will be scheduled in this matter before a final determination is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Aloha has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoena and subpoena duces tecum issued on its behalf if a hearing is requested.

It is, therefore,

ORDERED that Aloha Utilities, Inc., is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation. It is further

ORDERED that Aloha Utilities, Inc.'s, response to this show cause order must contain specific allegations of fact and law. Should Aloha file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, a further proceeding will be scheduled before a final determination of this matter is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. It is further

ORDERED that any response to this Order shall be filed with the Director, Division of the Commission Clerk and Administrative Services within 21 days of the date of issuance of this Order. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission this _____ day of _____,

BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.