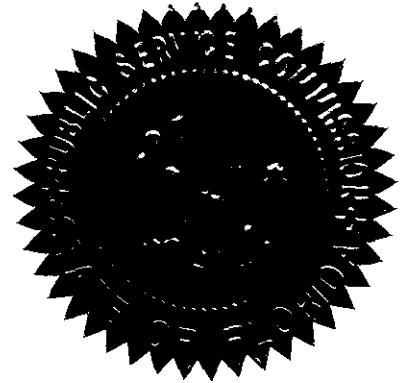


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR APPROVAL OF DOCKET NO. 060122-WU
STIPULATION ON PROCEDURE WITH OFFICE
OF PUBLIC COUNSEL, AND APPLICATION
FOR LIMITED PROCEEDING INCREASE IN
WATER RATES IN PASCO COUNTY, BY
ALOHA UTILITIES, INC.

PROGRESS REPORTS ON IMPLEMENTATION DOCKET NO. 060606-WS
OF ANION EXCHANGE IN PASCO COUNTY,
FILED BY ALOHA UTILITIES, INC.
PURSUANT TO ORDER PSC-06-0270-AS-WU.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 22

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

DATE: Tuesday, April 8, 2008

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

2 STEPHEN C. REILLY, ESQUIRE, Office of Public Counsel,
3 appearing on behalf of the citizens of the State of Florida.

4 BRIAN ARMSTRONG, ESQUIRE, representing FGUA.

5 JOHN WHARTON, ESQUIRE, appearing on behalf of Aloha
6 Utilities, Inc.

7 JEAN HARTMAN, ESQUIRE, appearing on behalf of the
8 Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 **CHAIRMAN CARTER:** We are on Item 22. Staff, you are
3 recognized for Item 22.

4 **MS. HARTMAN:** Good afternoon. Jean Hartman for
5 Commission Legal Staff.

6 Agenda Item 22 is staff's recommendation regarding
7 the Florida Governmental Utility Authority's filing of a
8 suggestion of abatement in Docket 060122-WU. In its filing,
9 FGUA suggests an abatement for 120 days of the Anion Exchange
10 Project currently being implemented by Aloha Utilities pursuant
11 to Commission order.

12 Staff recommends that the Commission grant a 120-day
13 abatement period for all actions associated with implementing
14 Anion Exchange and all actions necessary for Aloha to
15 interconnect with Pasco County except for the litigation to
16 resolve the protest of the Commission order regarding the
17 purchase of water from Pasco County.

18 Brian Armstrong, who represents the Florida
19 Governmental Utility Authority is in attendance and available
20 to answer your questions. Aloha counsel is also available to
21 answer questions.

22 **CHAIRMAN CARTER:** Thank you.

23 Commissioners, let's hear from Mr. Armstrong before
24 we get into our questions and discussions and debate.

25 Mr. Armstrong, good afternoon. You're recognized.

1 **MR. ARMSTRONG:** Thank you, Mr. Chair, Commissioners.
2 I could be very brief, but I'm here to answer any questions you
3 all might have, but the FGUA supports and appreciates the staff
4 recommendation. We support this Commission granting that
5 recommendation and allowing us 120 days. Like I say, I'm here
6 to answer any questions you might have in terms of the FGUA
7 order or our process at this point in time, but I know all the
8 previous matters have taken up quite bit of time, and so I'm
9 really just ready to answer any questions you might have.

10 **CHAIRMAN CARTER:** Thank you, Mr. Armstrong.

11 Mr. Reilly.

12 **MR. REILLY:** We are here to answer questions, too.

13 **MS. HARTMAN:** I'm sorry, Mr. Reilly is also here.

14 **CHAIRMAN CARTER:** Mr. Deterding, you are recognized.

15 **MR. WHARTON:** John Wharton.

16 **CHAIRMAN CARTER:** Mr. Wharton.

17 **MR. REILLY:** Marty is back in the office.

18 **CHAIRMAN CARTER:** Oh, good.

19 **MR. REILLY:** We also don't have any position with
20 regard to the suggestion, and we are here to answer any
21 questions that the Commissioners might have.

22 **CHAIRMAN CARTER:** Mr. Wharton, good to see you, sir.
23 Sorry about the mistaken identity. I've got to stay out of the
24 post office. Those black and white pictures, everybody looks
25 the same.

1 Commissioners, we are in our question phase.

2 Commissioner Skop, you're recognized, sir.

3 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. I have
4 a few questions directed to Mr. Armstrong, and then after the
5 end of the question and answer period, again, I'm not one to
6 mince words, so I probably have some things to say.

7 With respect to FGUA, I have read a lot of background
8 information and such. Am I correct to understand although that
9 Pasco County has expressed a desire to participate in the
10 consortium, there is no firm commitment for that utility -- I
11 mean, for Pasco County to buy the utility if it were acquired
12 by FGUA, is that correct?

13 **MR. ARMSTRONG:** Pasco County voted to become a member
14 of the FGUA. The FGUA is cooperating and coordinating all its
15 efforts with Pasco County. Pasco County has not said that they
16 will buy the utility once FGUA acquires it. The intention is
17 that they will over some period of time, but they haven't said
18 exactly when.

19 **COMMISSIONER SKOP:** Okay. And along that same line,
20 and, again, I'm referencing to the pleadings, because, again,
21 in the motion to abate, I see a lot of tentative or couching
22 language. If Aloha is acquired by Pasco County, and then blah,
23 blah, blah. But the second question would be equally there is
24 no assurance that FGUA wouldn't sell Aloha to another private
25 entity resulting in the same problems with potentially higher

1 costs passed through to the consumer, is that correct?

2 **MR. ARMSTRONG:** There is no chance that the FGUA is
3 going to sell to a private entity, no. No chance whatsoever.

4 **COMMISSIONER SKOP:** Well, I guess I'm not seeing
5 that, because I don't see that restriction anywhere in the
6 concept. For instance, if you acquire and hold based on the
7 background information, I don't see a restriction that wouldn't
8 allow FGUA to sell to a third party. I mean, I think that's a
9 big concern, because I could see it going private to
10 quasi-governmental back to private, and we still potentially
11 would have the same concerns and problems that are facing us
12 today.

13 **MR. ARMSTRONG:** Actually, it is private to
14 government. I mean, the FGUA is a governmental entity created
15 by Florida Statutes, and the interlocal with the county gives
16 the county the option to purchase facilities whenever they
17 desire to purchase it. The FGUA has been around for nine years
18 now, and there are probably 15 or more counties and cities that
19 have participated in the FGUA process.

20 As a member, there has been one local government that
21 had a utility system within its post boundaries, political
22 boundaries that hasn't gotten exactly what it wants on any
23 single vote. In other words, Commissioner, if the FGUA were to
24 say we want to vote and sell this facility to somebody else,
25 and if that one county, Pasco County says no, that utility is

1 in my area, it would never happen. It has never happened.

2 **COMMISSIONER SKOP:** Okay. And then also Page 2,
3 Paragraph 5 of your petition or suggestion to abate, you
4 mentioned it is FGUA's intention to utilize a greater amount of
5 bulk water from Pasco County, and that the Anion Exchange
6 system may not be required. Where exactly do you guys expect
7 to be able to be able to get that bulk water, given the fact
8 that it is not currently available either to Pasco County or
9 Aloha? Because, I mean, it seems to me like if we could wave
10 the magic wand, I mean, that might be the end-all solution, but
11 I'm kind of perplexed as to how you guys plan to tap a resource
12 that has been nonexistent to date.

13 **MR. ARMSTRONG:** Well, we are a governmental entity,
14 Commissioner, and there are other acquisition possibilities
15 here that the county has asked us to pursue. There is the
16 Tampa Bay Water Authority, which is, as we all know, the
17 regional authority that provides bulk water to the local
18 government members. We also represent the Tampa Bay Water
19 Authority.

20 We are aware of situations that might be available to
21 us as a government entity that wouldn't be available to a
22 private entity, and we also don't have the strictures that the
23 private utilities do in terms of the equity investments, the
24 debt/equity decisions they make. A lot of the decisions you
25 were talking about earlier in terms of, you know, expensing

1 versus equity capital. We don't have those decisions to make.

2 It is a cooperative process, like I say,
3 Commissioner, that has worked with so many counties and cities
4 so far. And because of the fact that we are government
5 recognized by other governments to be so, the cooperation is
6 paramount.

7 **COMMISSIONER SKOP:** And just one additional question.
8 I saw a recent news clip where, I guess, it indicated FGUA is
9 on a \$91.9 million five-year campaign to upgrade facilities,
10 and I think that is the Lehigh Wastewater Plant, is that
11 correct? Does that sound right?

12 **MR. ARMSTRONG:** Yes, that sounds correct.

13 **COMMISSIONER SKOP:** That sounds to me, at least, like
14 a tremendous undertaking. I know that FGUA seems to be pretty
15 small in terms of its corporate resources. How, if Aloha were
16 acquired by FGUA, seeing that you are undertaking all of those
17 other projects, would you be able to address Aloha's problems
18 in a timely manner?

19 **MR. ARMSTRONG:** Commissioner, every system that is
20 owned by the FGUA is distinctly and separately. The revenues,
21 the expenses, the investments made by one system have nothing
22 to do whatsoever, there is the absolute Chinese wall with
23 investments, expenses, and revenues from another system. They
24 are all kept absolutely separate.

25 It's interesting you are bringing -- the Lehigh

1 System in Lee County that is owned by the FGUA, as part of the
2 acquisition, the FGUA actually took out loans and planned for
3 capital investments over a five-year period of time, which we
4 are just ending the tail of right now. And as a result of that
5 planning has already made tens of millions of investment
6 without raising the rates over there other than the indexing
7 and pass-through type rates that you all are familiar with.
8 There's an indexing each year. But it has been around almost
9 ten years now. So many local governments have used it. The
10 commitments they have made, as I have been representing them,
11 the commitments they have made buying and selling the systems,
12 you know, buying on behalf of local governments transitioning,
13 they have met all of those commitments, Commissioner.

14 **COMMISSIONER SKOP:** And just as a general comment,
15 again, I'm supportive of the process, but at least in my view I
16 think this Commission needs a comprehensive plan to solve this
17 ongoing problem and improve the water quality for Aloha's
18 customers. And I'm a little concerned by the suggestion to
19 abate, because at least in my perspective, there is no backup
20 plan and it makes the Commission take an active role which the
21 parties could later use against the Commission. And I would
22 note in that regard that the parties, while they do not object
23 to the suggestion of abatement, they are not petitioning for it
24 either. So, I mean, I will get more into that in the
25 discussion frame, but thank you very much for answering those

1 questions.

2 **MR. ARMSTRONG:** Sure.

3 **CHAIRMAN CARTER:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** Thank you.

5 Also to FGUA, I'm guess -- I'm sorry, I didn't hear
6 your name.

7 **MR. ARMSTRONG:** Brian Armstrong.

8 **COMMISSIONER ARGENZIANO:** Mr. Armstrong. Just to
9 kind of work off what Commissioner Skop just asked you. In
10 regards to the Aloha problems and trying to get those fixed,
11 because that's a great concern for all of us, when it comes to
12 rate increases, if FGUA were to take over that facility, any
13 rate increases that were to be initiated would be from all of
14 FGUA's members, not just the Pasco County residents, the Pasco
15 County area?

16 **MR. ARMSTRONG:** The FGUA board consists of one
17 representative from each member.

18 **COMMISSIONER ARGENZIANO:** And the members could be a
19 panhandle member, or would the people of that area have -- and
20 just for my curiosity -- would they have a way to address that
21 rate increase or proposed rate increase?

22 **MR. ARMSTRONG:** Yes. Commissioner, we act just like
23 a county or a city would, and that rate increase, the hearings
24 would be held. We have to give the same notice that the
25 counties and the cities do. That rate hearing would be held in

1 that locality. Again, I think it's real important, as I say,
2 and I make sure every time I go before that board, not once has
3 there been a decision made affecting a member whose -- you
4 know, it is their system in their county, for instance, not
5 once has a decision been made that that member doesn't agree
6 with.

7 So if there is a decision to be made and that member
8 says we don't make a decision today, they don't make a
9 decision. If that member says I don't want this to happen, it
10 doesn't happen. And that is without exception. That has been
11 going on for nine years now. So, again, I'm proud to be
12 representing a group like that, you know, of counties and
13 cities.

14 **COMMISSIONER ARGENZIANO:** And the only thing else I
15 want to say is at the time that we dealt with this, I remember
16 I was not going to vote in favor of what we had before us that
17 day because I wanted OPC's issue to be addressed. And it at
18 that time was addressed, and I still had concerns. So what I
19 want to say to everybody at this point is that I'm glad that we
20 may be holding on a little bit, even though I, like
21 Commissioner Skop, have the concerns of how we get to fix the
22 problems over there, because I think they are in dire straits,
23 and maybe we can get to have some more information on the table
24 when we come back to this.

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

1 Commissioner McMurrin, you're recognized.

2 **COMMISSIONER McMURRIAN:** I do have one for our staff.
3 With respect to the mention that there was no backup plan, if
4 negotiations were to stop and we were made aware of that, we
5 could still entertain something to start the proceeding back
6 up, even within that 120-day period, right? I mean, staff
7 could come back with a recommendation to basically take us out
8 of abatement if that were necessary.

9 **MS. HARTMAN:** Staff could come back and have a
10 recommendation to shorten the abatement period, certainly.

11 **COMMISSIONER McMURRIAN:** Okay. Mr. Cooke?

12 **MR. COOKE:** I agree with that.

13 The Commission is basically acting under its own
14 authority to impose this abatement, if it chooses to do so. It
15 can take that away in the circumstance if we found out that
16 there are changed circumstances where something is not going
17 forward.

18 **COMMISSIONER McMURRIAN:** And I guess I will have one
19 follow-up to that, Chairman, thank you.

20 To Mr. Armstrong, and I ask this really as a favor in
21 a sense, can you keep our staff apprised of the status of
22 negotiations. If it suddenly were to fall through, would you
23 let us know?

24 **MR. ARMSTRONG:** There is no question we would do
25 that, Commissioner. And I just want the record to be clear,

1 too, that we have cooperation and assistance, you know, the
2 Office of Public Counsel has communicated and will communicate
3 with us, the company certainly has been communicative and
4 cooperative to date. I would be glad to do the same kind of
5 thing with staff. You know, the county obviously is part and
6 parcel of what we are going here, so I certainly will let your
7 staff know.

8 **CHAIRMAN CARTER:** Commissioners, we are in debate.
9 As we proceed further, Mr. Armstrong, time is of the essence,
10 and I'm sure you are well aware of that. And I think that has
11 come loud and clear from what you have heard from the bench.

12 Commissioners, we are in debate. We are in debate.
13 Commissioner Skop, you're recognized.

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

15 Again, we have two issues before us today, and I'm
16 not so sure that they are not kind of inextricably intertwined,
17 but I guess I'm going to try and say what I need to say and
18 maybe, hopefully, offer some suggestion.

19 Again, Mr. Armstrong, I think very highly, and I'm
20 hopeful that your negotiations will be fruitful and achieve the
21 right result. I'm less optimistic. Apparently you guys have a
22 little bit more cooperation with Aloha than the Commission has
23 experienced to date. But as I said previously, I feel that we
24 need a comprehensive plan to solve this problem, this ongoing
25 problem, and improve the water quality for Aloha customers.

1 And in my view there is probably four best-case scenarios that
2 could occur.

3 First and foremost, Pasco County would purchase Aloha
4 directly thereby minimizing the transaction costs. That has
5 not happened to date. So the second option or scenario would
6 be that FGUA purchases, and that is what we are entertaining
7 now. And I wish you good luck and God speed on that.

8 **MR. ARMSTRONG:** Thank you.

9 **COMMISSIONER SKOP:** The third best-case scenario, if
10 option one or two never come to fruition, would be Aloha would
11 embrace the concept of being a good corporate citizen and show
12 the desire to fix the problem in a timely manner instead of
13 adopting a litigation posture at each step in the proceeding.

14 And the fourth option to me would be move forward
15 with deletion. And, you know, to me, my concern is because we
16 are being asked to do something here as a suggestion of
17 abatement, and to me I'm concerned about the backup plan.
18 Because, again, the Commission is being asked to put itself in
19 harms way.

20 Just a quick review of some procedural history. We
21 were previously in a deletion posture prior to the settlement
22 agreement being entered into, and under the settlement
23 agreement there seems to be an ongoing inability to address
24 emerging technical issues to the satisfaction of all parties.
25 And that has become problematic because some may view the

1 existed agreement as being irreparably broken. Deletion, I
2 guess we were previously in that posture, and there are
3 problems with deletion under Florida Statute 367.1612, the
4 penalty provision. That provision is lacking to the extent
5 that the statute provides no next step guidance as to who steps
6 in to provide service upon revocation of the certificate.

7 Now, certainly in statutory construction one could
8 gap fill from the abandonment provision that follows thereafter
9 in 367.165, but statutory construction is not a good option.
10 Therefore, on a forward-going basis I would also take this
11 opportunity to request that staff should make it a legislative
12 priority to have that statute amended, as necessary, to provide
13 next step guidance, i.e., a COLR, or somebody to step in the
14 shoes in order to give the Commission the tools necessary to
15 effectively perform its regulatory functions.

16 **CHAIRMAN CARTER:** That would probably be an issue for
17 Internal Affairs, Commissioner.

18 **COMMISSIONER SKOP:** Yes, sir.

19 And, finally, again, I think Commissioner Argenziano
20 maybe mentioned it, but there was perhaps the option of motion
21 to reconsider, because, again, there is many motions that have
22 spawned from our prior ruling, and I will get to that more in
23 the other proceeding. But, you know, basically Aloha
24 petitioned for a formal administrative hearing, OPC petitioned
25 on the PAA, Better Water Now petitioned on the PAA. Certainly,

1 you know, we could reconsider subject to administrative
2 finality. That would create issues on its own. You know, I
3 have tried to analyze this from every angle, but Aloha would
4 probably object and litigate as usual. But the hearing process
5 might resolve some of the outstanding issues, but yet that is
6 another delay in improving the water quality.

7 So that gets us to the suggestion to abate. And to
8 me, again, my primary concern for this Commission is there is
9 no backup plan. I don't want to put all the eggs in one
10 basket. I'm very hopeful that this acquisition goes through,
11 but I think as Commissioner McMurrian pointed out, we need a
12 backup plan. And the suggestion to abate effectively makes the
13 Commission take an active role which I feel and has been shown
14 to us the parties could later use against the Commission.

15 And as I previously noted, the parties themselves are
16 not objecting, but yet they are not taking the active step of
17 petitioning, so they are looking to the Commission to
18 affirmatively act. And, you know, kind of like let's not fool
19 ourselves, nothing has really happened, so I don't really see
20 anything happening moving towards the Anion Exchange in 120
21 days, but the motions themselves effectively abate.

22 I think what I would take a look at in terms of next
23 step is perhaps the parties themselves might want to sign an
24 agreement or petition for abatement, or agree that this is
25 something a little bit more affirmative for them other than not

1 objecting that we perhaps seek some concessions from Aloha in
2 terms of their willingness not to litigate certain issues, and
3 closely monitor the situation, as Commissioner McMurrian has
4 suggested. I'm very supportive of trying to support FGUA's
5 efforts, and I want to make that crystal clear, but likewise,
6 too, you know, there is no guarantee that this deal will ever
7 come to fruition or be consummated. And 120 days, I could
8 clearly envision the Commission being on the hot seat when
9 those negotiations fail and people are looking to us to say why
10 did you do such a thing.

11 I mean, I would feel a lot more comfortable if the
12 parties were petitioning and making it their intent where the
13 Commission would agree to that rather than putting the onus on
14 the Commission to step in and effectively interject itself into
15 a settlement agreement. Because, again, I'm not so sure that
16 taking such action couldn't be used against this Commission in
17 the future. And, again, I think that the Commission needs to
18 be cognizant of solving the problem affirmatively for the
19 benefit of Aloha's customers and improving their water quality,
20 but also not putting ourselves in harms way in doing so.

21 Thank you.

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

23 Commissioners, we are in debate. For a comment
24 standpoint, and, Mr. Armstrong, with FGUA, I mean, they are not
25 the new kid on the block. Had this been any other entity, yes,

1 I would have some reservations, but this is what they do. They
2 are a quasi-governmental entity, and government to government
3 it would be their credibility in the whole state of Florida
4 would go down in flames if they were to come and ask us for an
5 abatement and not follow through.

6 The other thing, Commissioners, is that I would not
7 want us to more than this, because we don't want to put either
8 of the parties in an unfair bargaining position. Is that Mr.
9 Armstrong knows, we have asked him to stay in contact with our
10 staff. If the deal goes up in flames tomorrow, you call our
11 staff and we are back to where we need to be and we would go
12 ahead on and put it on an expedited agenda, Commissioners.

13 But I do think that were this any other entity here
14 talking about this, yes, I could see that. But FGUA has a long
15 history of doing good things. A lot of these county
16 governments don't have the money initially to do that, so they
17 go through FGUA until they can raise the bonds, or raise the
18 finances, or go through these kinds of processes and all like
19 that. And I think that's probably why you don't hear a motion
20 from either of the parties or anything like that is that they
21 have got a track record in doing this. And I would not want to
22 see us -- I mean, before us here is that a quasi-governmental
23 entity has asked for a petition for abatement for 120 days
24 saying that if there is a problem or a concern they will
25 immediately notify staff and we are in no worse position then

1 than we are now.

2 But I do think that because you have got a credible
3 entity out there like FGUA, I think that the issue before us,
4 Commissioners, it puts us in the posture to allow them to go
5 ahead on and negotiate in good faith and go ahead on and make
6 the purchase. And if they can't make the purchase, they will
7 come back to us as soon as possible. But I really don't think
8 that we want to get in the posture to kind of -- this may be a
9 house of cards and you pull one out and the whole thing
10 collapse. I mean, I'm just having a discussion. We are in our
11 debate phase and all like that. But I'm just saying from the
12 standpoint of FGUA is that they are a different entity, they
13 are a different animal.

14 So if this were, you know, Bill and Joe's Water
15 Company trying to buy Aloha, I would have grave concerns and I
16 would say no, under no circumstances. Well, I would say under
17 one circumstance is after hell froze over, but I think that
18 what is before us today is a quasi-governmental entity that has
19 done a lot of great work for county governments that do not
20 have the resources currently. And in this time of budget
21 concerns and all like that, I think that this is an opportunity
22 for a local government to be assisted in this entity that is
23 set up, the Florida Governmental Utility Authority.

24 Commissioner Argenziano, you're recognized.

25 **COMMISSIONER ARGENZIANO:** I agree with you to a

1 certain extent. I think that FGUA does a good service,
2 especially in those areas when the counties cannot afford to
3 buy out. And with all due respect, they also sell back at a
4 nice profit, too, when the counties buy back. And I remember
5 buying -- I remember the language when it came into the House
6 of Representatives to create it, and it really has helped a lot
7 of counties when it comes to -- I know Citrus County and
8 several other counties that they are involved with. But it
9 probably, as you say, is a more comforting thing knowing that
10 they are larger, but they do pretty good, too, when they sell
11 back. So just a comment.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioners, we are in debate. Mr. Armstrong and
14 then we will come back to Commissioner Skop.

15 Mr. Armstrong.

16 **MR. ARMSTRONG:** I appreciate that, because I don't
17 want any misimpressions, but --

18 **COMMISSIONER ARGENZIANO:** I know, you're going to say
19 that they sell back at the same --

20 **MR. ARMSTRONG:** Yes. And the history is all those
21 local governments that have taken back systems from the FGUA,
22 they take it not at a purchase price, there is no benefit,
23 there is no gain. They buy the debt. They just assume the
24 debt that is outstanding, which includes the purchase price
25 debt as well as any investment made. So, there isn't any

1 profit to the FGUA at all, Commissioner. I'll give you a for
2 instance, and that is probably what you have heard, like
3 Osceola joined Tohopekaliga Water Authority last year, took the
4 system out from the FGUA for the debt outstanding, and they had
5 about \$70 million of equity they didn't have to pay for,
6 facilities in the ground that they didn't have to pay for
7 because all they did was assume the debt that was outstanding.
8 So I just wanted to be clear, there --

9 **COMMISSIONER ARGENZIANO:** And I may have misphrased
10 it, but you do okay.

11 **MR. ARMSTRONG:** You know, it is a government.

12 **COMMISSIONER ARGENZIANO:** We'll talk.

13 **MR. ARMSTRONG:** Yes, we do need to talk,
14 Commissioner, because it really is a government.

15 **COMMISSIONER ARGENZIANO:** I know, I know. And I'm
16 not going to make any more comments. I just know a lot
17 about --

18 **MR. ARMSTRONG:** Well, we're going to talk.

19 **COMMISSIONER ARGENZIANO:** -- you're a governmental
20 entity, too.

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

22 **COMMISSIONER ARGENZIANO:** I appreciate it, though.

23 **CHAIRMAN CARTER:** We are in debate. Commissioner
24 Skop.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

1 And I fully appreciate your insight in the debate
2 process. Again, I'm not -- I'm fully supportive of FGUA's
3 efforts, and I want to make that clear. With respect to the
4 suggestion to abate, I'm not exactly sure that the motions that
5 have been filed effectively debate in themselves. Again, my
6 only concern -- certainly the Commission can take affirmative
7 steps to entertain and approve the motion or the petition or
8 suggestion to abate -- excuse me, the suggestion to abate.
9 But, again, my only concern is us stepping into the morass as
10 opposed to, you know, letting the procedural tools that are
11 already in place effectively do what would require affirmative
12 action on our part.

13 I mean, I'm very supportive of that, and I hope that
14 the transaction and then there could be a sale and purchase
15 agreement consummated in short order. But, again, I'm looking
16 ahead, and I know that we are on the hook for making sure that
17 this problem goes forward and gets solved. So I'm hesitant to
18 do anything that would bring undue scrutiny back towards the
19 Commission again, and I think we are being asked to interject
20 ourselves, and I'm wondering whether, again -- and we might
21 want to look to our legal staff whether the motions or the
22 petitions themselves with respect to our prior interconnect
23 action which kind of ties into all of this effectively abate in
24 themselves.

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

1 **MS. HARTMAN:** As a practical matter with the protest
2 going on right now, we are kind of in a de facto abatement
3 posture right now, because the Anion Exchange system, that
4 design is predicated with knowing how much water we are going
5 to get from the interconnect, and that's the subject of a
6 protest.

7 **COMMISSIONER SKOP:** As a follow-up question to that,
8 and it would be unlikely for that protest to be heard and
9 adjudicated in the 120-day time frame that we are talking about
10 during the abatement?

11 **MS. HARTMAN:** I think that's probably correct. I
12 know we are trying to get it on the calendar as soon as
13 possible, though.

14 **COMMISSIONER SKOP:** Thank you.

15 And, again, I'm trying to be supportive, but, again,
16 I'm just trying to protect ourselves, too.

17 **CHAIRMAN CARTER:** Very good.

18 Commissioner Edgar, you're recognized.

19 **COMMISSIONER EDGAR:** Thank you. Just a procedural
20 question, and I apologize if I should have asked this earlier.

21 But to staff, if, indeed, the staff recommendation
22 were to go forward and we were to approve the suggestion of
23 abatement for 120 days, what would happen at the end of that
24 120 days is my first question. And the second question is, I
25 noticed at the bottom of Page 4 there is discussion of the

1 additional part of the staff recommendation that -- litigation
2 on the remaining issues -- I'm sorry, I'm tired -- on the
3 appropriateness of the interconnection that that litigation
4 procedurally continue to move forward. And so I guess my
5 second question then is when would that come before the
6 Commission, approximately.

7 **MS. HARTMAN:** In staff's recommendation, just to be
8 clear, we're recommending everything be abated but for the
9 hearing on the interconnection, all those protests. And I
10 think you asked when was that likely to be heard by the
11 Commission?

12 **COMMISSIONER EDGAR:** Yes, that was my second
13 question.

14 **MS. HARTMAN:** We are trying to still work to get it
15 on the calendar as soon as possible. I have gotten a couple of
16 sets of dates. I think the earliest date is early December
17 right now.

18 **COMMISSIONER EDGAR:** Okay. So end of the year,
19 approximately; before, if that moves forward.

20 **MS. HARTMAN:** Uh-huh.

21 **COMMISSIONER EDGAR:** And then my first question was
22 if the remaining part of the staff recommendation were to be
23 approved, what would happen in 120 days? I mean, we abate for
24 120 days then what?

25 **MR. COOKE:** The abatement on its terms would expire,

1 so we would not be abating any further. We still would not
2 have likely conducted the hearing on the protests that have
3 been filed. We could arguably try to move the anion system
4 along, but as Ms. Hartman explained, it is hard to finalize
5 design on the Anion system until the bulk water purchase from
6 the county, and that's the interconnection, is resolved, and
7 that is the subject of a protest.

8 **COMMISSIONER EDGAR:** I guess what I'm trying to just
9 think through is realizing that the protests have been made and
10 that that is out there, and that needs to work its way through
11 the appropriate administrative review process, that an 120-day
12 abatement, I mean, is it accurate to say that really what we
13 may be doing is abating until the hearing, or the hearing
14 results? And if I'm wrong on that, then I just need to
15 understand how the two pieces fit together better than I think
16 I do right now. And if I'm right on that point, then I guess I
17 would just like to make sure that we are all clear and thinking
18 exactly the same thing and hearing the same thing.

19 **MS. HARTMAN:** I think as a practical matter the
20 protest abates everything until the protest is resolved. I
21 guess the one thing that could happen is Aloha could go forward
22 with the interconnection subject to a refund if the protest
23 doesn't get resolved in the utility's favor. I believe that is
24 unlikely. So I think everything pretty much is at a standstill
25 until we resolve those interconnection issues that are the

1 subject of the protest.

2 **MR. COOKE:** As a practical matter, I think the
3 protests are a de facto abatement anyway. However, Aloha could
4 arguably go forward and spend money on trying to further permit
5 the interconnection or purchase property associated with the
6 interconnection and at some point try to seek recovery of that.
7 The abatement would basically give certainty that further
8 expenditures should not occur during that 120 days. After that
9 120-day period runs, we're back to where we are now and we
10 would probably want to revisit perhaps bringing further
11 recommendations or seeing where we are at that point.

12 **COMMISSIONER EDGAR:** Okay. And I think that is what
13 brings me back to my first question, which is what would happen
14 after 120 days? Would it come back before us Godspeed, God
15 forbid, or would that end of the 120 days trigger something
16 else is what I was trying to think through.

17 **MR. COOKE:** Well, I think, you know, if there were
18 further negotiations for the purchase going on, then we would
19 want to be apprised of that, and if that were likely to keep
20 going, that would be one thing for us to consider and make a
21 recommendation on whether we should further abate at that
22 point. If that has stalled, has no chance of going forward
23 after 120 days, then we would need to revisit it and decide
24 what, if anything, we could do to keep that anion system
25 process going forward. So I think we would have to answer that

1 question at the time. But, again, as a practical matter, it is
2 very difficult -- it will, in my opinion, be difficult to get a
3 resolution on the anion system until the interconnection
4 aspects are fully resolved.

5 **COMMISSIONER EDGAR:** Which barring settlement would
6 be post-hearing, probably very early next year.

7 **MR. COOKE:** Unless the parties and others -- nothing
8 can stop the parties from coming together during the hearing
9 process and saying here is how we would like to resolve this.

10 **COMMISSIONER EDGAR:** Which is why I said barring
11 settlement.

12 **MR. COOKE:** Right, okay.

13 **COMMISSIONER EDGAR:** Thank you.

14 And thank you, Mr. Chairman.

15 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

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

17 And, again, I'm hesitant to say this because, again,
18 it is a drastic option. But one of the actual scenarios that
19 ran through my mind, and this is just for the benefit of trying
20 to solve this problem for the countless number of customers
21 that I have spoke to that I have been yelled at, I have
22 experienced this for 14 years. You know, one of the scenarios
23 I ran through, and if there wasn't a problem with the statute
24 would be to move for deletion, and hopefully it would be
25 properly seconded.

1 And, again, I'm not going there, so I don't want to
2 give anyone a coronary. But move for deletion, and if it was
3 properly seconded and passed, then move again to stay the
4 deletion pending the 120 days giving proper time for the
5 acquisition to occur. And if that didn't occur, then that
6 would be the backup plan. But that may be a little too drastic
7 of a remedy. But, again, I think that we need to solve this
8 ongoing problem in some way or another, and I'm hopeful that
9 FGUA will make that acquisition happen.

10 **CHAIRMAN CARTER:** Commissioner Argenziano.

11 **COMMISSIONER ARGENZIANO:** Commissioner Edgar's
12 questions prompted one for me, and I'm not sure if you have
13 already answered it, and I just didn't hear it or I'm not sure
14 where we stand. As a result of the protests, our vote that we
15 took on the exchange, interconnection rate, whatever recovery
16 it was, I can't remember the proper title of it, but that vote
17 is moot because of the protests?

18 **MR. COOKE:** I'm not sure I would describe it as moot,
19 but it is not going into effect pending the hearing.

20 **COMMISSIONER ARGENZIANO:** And I think Commissioner
21 Edgar had asked the question, but just to extract a little bit
22 more information. If you go into the hearing and everything is
23 resolved and everybody is happy with everything, then we are
24 back where we were after that vote?

25 **MR. COOKE:** I think the answer to that would be yes.

1 I mean, we would be at a resolution of the parties' concerns.

2 **COMMISSIONER ARGENZIANO:** The protests. And we would
3 be back where we voted.

4 **MR. COOKE:** Well, it depends on how the hearing
5 goes. I mean, the hearing might produce evidence that says no,
6 we should not have that interconnection. The purpose of the
7 hearing would be to revisit that decision in an evidentiary
8 process so that further facts could be developed and we would
9 bring you a post-hearing recommendation.

10 **COMMISSIONER ARGENZIANO:** Okay. That's what I'm glad
11 to hear, because I was very cautious or apprehensive on voting
12 that day because I thought more information would be needed for
13 all sides, and I'm glad to hear that. So as that progresses it
14 would be, I guess, telling. Whatever happens there, then we
15 figure out what to do at that point.

16 **MR. COOKE:** That's right, Commissioner.

17 **COMMISSIONER ARGENZIANO:** Thank you.

18 **CHAIRMAN CARTER:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you.

20 And briefly to Commissioner Argenziano's point, I
21 think that the comment I made about there is a bunch of
22 emerging technical issues that haven't been addressed to the
23 satisfaction of the parties. I think those have been brought
24 forth in the protest with respect to whether an interconnection
25 point or a choice thereof would help improve the water quality

1 and mitigate the need for the anion exchange and a host of
2 other issues. What to do with the brine, whether you are going
3 to truck it to Jacksonville, whether it is cost-effective as
4 opposed to bulk water. So there is a lot of issues that need
5 to be resolved, and certainly the hearing process might resolve
6 some of those outstanding issues. But, again, that's just
7 another delay in improving the water quality. But I think that
8 ultimately if we get a handle on these issues and get the
9 agreement of the parties, that might be the backup plan in
10 itself to the extent that the existing settlement agreement
11 could be modified. But, again, I'm hopeful that the FGUA
12 acquisition will go through, and I think that that has kind of
13 been expressed as the sentiment of my colleagues.

14 **CHAIRMAN CARTER:** Commissioner Argenziano.

15 **COMMISSIONER ARGENZIANO:** I think I can ask this
16 question. If FGUA was to purchase Aloha, then our vote would
17 be moot, or would it not be? Are we then passing along that
18 vote and that increase to FGUA?

19 **MR. COOKE:** Once the purchase occurs it would be a
20 decision-making on our part whether the transfer would go
21 forward. And that will get into issues as to whether it is a
22 transfer as of right because it is a governmental authority or
23 not, but there would be a transfer proceeding that we would
24 look at. Once that transfer occurs, it is out of our
25 jurisdiction. It is a governmental --

1 **COMMISSIONER ARGENZIANO:** Right.

2 **MR. COOKE:** So I think it would essentially be moot
3 at that point.

4 **COMMISSIONER ARGENZIANO:** Okay. And then it would be
5 --

6 **MR. COOKE:** I don't think we would have to have a
7 hearing if it gets transferred to a government entity.

8 **COMMISSIONER ARGENZIANO:** And at that point, I guess
9 our decision would be moot.

10 **MR. COOKE:** Our decision is not affected at this
11 point.

12 **COMMISSIONER ARGENZIANO:** FGUA and the county would
13 have to then --

14 **MR. COOKE:** Right.

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

16 **MR. COOKE:** Can I make one thing clear, though. The
17 protest literally on the interconnection, that limited
18 proceeding, I think because of the way these matters work it
19 will be extremely difficult not to deal with some of the issues
20 that are being discussed in the anion settlement process that
21 are not literally on that anion settlement and on that order.
22 I just want that to be clear.

23 **CHAIRMAN CARTER:** Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And I
25 apologize because sometimes I have trouble hearing down there,

1 but I want to make sure I will fully understood what
2 Commissioner Argenziano asked our general counsel and what I
3 heard.

4 But I think your question, Commissioner, was that
5 would our prior decision being granting the rate increase be
6 moot if the utility was purchased, and I think Mr. Cooke's
7 response, I think, got into a little different area. Again,
8 I'm having trouble hearing, but I think he talked about a
9 transfer of right, which I think is a footnote to something
10 else I read. But I just want to make sure we are on the same
11 wavelength, and I heard your question, and he understood it in
12 the same manner as I did.

13 **MR. COOKE:** What I heard Commissioner Argenziano ask
14 is whether the -- essentially the concern about the
15 interconnection decision that was made previously. It is
16 essentially off the table at this point. I don't want to call
17 it moot, because it is a decision that has been made, and there
18 has been discussion about whether it could be reconsidered, et
19 cetera. A vote was taken. However, the effect of that vote is
20 no longer affected in the sense that decision will not be
21 carried out until a hearing is held and the result of that
22 hearing are considered and a further decision would be made by
23 the Commission. But, if in the meantime during that process,
24 FGUA purchases the Aloha entity, then for all intents and
25 purposes our jurisdiction will be gone.

1 **CHAIRMAN CARTER:** Because it transfers to a
2 governmental entity.

3 **MR. COOKE:** As long as there is a transfer
4 proceeding. And I don't think I want to get into the ins and
5 outs of whether its of rights or whether it is subject to the
6 public interest. I think that is appropriately discussed down
7 the road if the purchase actually occurs. It is brought up, I
8 mean, our prior Commission decisions have been that it is
9 transferred as of right to FGUA.

10 **CHAIRMAN CARTER:** Commissioners, I was just trying to
11 keep us focused on this matter with FGUA, a quasi-governmental
12 entity, that had asked us as they proceed through the process
13 of negotiations. I mean, about the only dance I know how to do
14 is the waltz, but I certainly would be glad when this is
15 resolved. And I hope that the sale goes through and am looking
16 forward to this. I think that this is probably one of the most
17 significant events to occur in this whole case during the whole
18 proceedings and all.

19 And I think that, as I said earlier, FGUA is a
20 quasi-governmental entity, they do this, this is what they
21 excel at, and I would be reluctant to get beyond the four
22 corners of the document in front of us. Obviously, if it
23 transfers to a governmental entity, it would be just like us
24 transferring it to a county with all of those kinds of things.
25 I mean, we can discuss even more if you want to, but I believe

1 that we have kind of -- I've heard a lot of Commissioners ask
2 the same questions over, and we can do that until I'm blue,
3 which probably will be a shorter trip for me than the rest of
4 you guys, but I believe that we have pretty much answered all
5 our questions. So at this point, Commissioners, is there any
6 further debate, otherwise I will be asking for a motion or more
7 debate.

8 **COMMISSIONER ARGENZIANO:** (Inaudible).

9 **CHAIRMAN CARTER:** Commissioner Argenziano moves
10 staff.

11 **COMMISSIONER SKOP:** I will second it with the caveat
12 that I'm supportive of FGUA, but I have concerns that, you
13 know, that I think we need a backup plan. But I think it is
14 the right thing to do based on the discussion we have had.

15 **CHAIRMAN CARTER:** Okay. Mr. Armstrong, I'm trying to
16 get my dancing shoes ready, okay?

17 **MR. ARMSTRONG:** Yes, absolutely.

18 **CHAIRMAN CARTER:** We are counting on you.

19 **MR. ARMSTRONG:** We are going to have a party at the
20 end of this, right?

21 **CHAIRMAN CARTER:** Commissioners, we have a motion and
22 a second. Any further discussion or debate?

23 Commissioner McMurrrian.

24 **COMMISSIONER McMURRIAN:** I just want to say, and
25 maybe I shouldn't, but I don't know, I do also hope the

1 purchase goes through, but I did want to say there was some
2 discussion earlier about what kind of entity might could buy
3 Aloha, and I just wanted to say for me that I would disagree,
4 that I wouldn't -- it would depend on the terms at the time.
5 If for some reason this doesn't go through and there were other
6 utilities that were looking at that, whether they be private or
7 public, for me, you know, I would wait and see what might be
8 proposed. I can't say that I disagree with some other entity
9 public or private, perhaps, doing that in the future, too. I
10 just wanted to clarify that.

11 And the other thing was more important, which was the
12 120 days from the date of the order, or from the date of the
13 decision? So, I want to clarify that.

14 **CHAIRMAN CARTER:** Mr. Cooke.

15 **MR. COOKE:** I suggest from the date of the order,
16 just so there is greater certainty when that comes out. I
17 mean, it will come out at a certain point in the future.

18 **CHAIRMAN CARTER:** If it weren't this late in the day,
19 I would ask them to change out your microphone, but, I guess we
20 can go with that.

21 Commissioners, any further debate? We have a motion
22 and a second on the floor. All of those in favor, let it be
23 known by the sign of aye.

24 (Unanimous affirmative vote.)

25 **CHAIRMAN CARTER:** All those opposed, like sign. Show

1 it done.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
6 Section, FPSC Division of Commission Clerk, do hereby certify
7 that the foregoing proceeding was heard at the time and place
8 herein stated.

9

10 IT IS FURTHER CERTIFIED that I stenographically
11 reported the said proceedings; that the same has been
12 transcribed under my direct supervision; and that this
13 transcript constitutes a true transcription of my notes of said
14 proceedings.

15

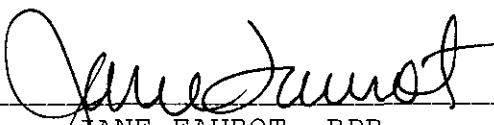
16 I FURTHER CERTIFY that I am not a relative, employee,
17 attorney or counsel of any of the parties, nor am I a relative
18 or employee of any of the parties' attorney or counsel
19 connected with the action, nor am I financially interested in
20 the action.

21

DATED THIS 21st day of April, 2008.

22

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JANE FAUROT, RPR
Official FPSC Hearings Reporter
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