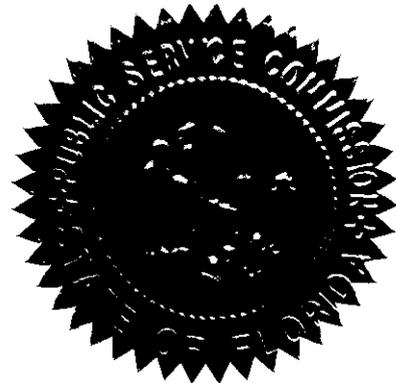


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060606-WS

In the Matter of:

PROGRESS REPORTS ON IMPLEMENTATION OF
ANION EXCHANGE IN PASCO COUNTY, FILED
BY ALOHA UTILITIES, INC. PURSUANT TO
ORDER PSC-06-0270-AS-WU.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 23

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) 413-6734

DOCUMENT NUMBER-DATE

1 APPEARANCES:

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

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:** Commissioners, let's give staff a
3 moment to get ready for Item 23. Oh, it's the same guys.

4 **MS. HARTMAN:** Are you tired of me?

5 (Laughter.)

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

7 **MS. HARTMAN:** In Item 23, staff has recommended that
8 Aloha Utilities be ordered to show cause in writing within 21
9 days why it should not be fined for knowingly failing to comply
10 with the Commission order for failing to report matters
11 material to delay of the implementation of the anion exchange
12 treatment facilities in its quarterly report.

13 Specifically, it appears that Aloha was aware of
14 matters that would result in material delays in regard to
15 obtaining needed reports from Doctor Levine prior to its
16 submission of its July 3rd quarterly report, yet Aloha did not
17 provide this information in its quarterly report. Aloha's
18 failure to report the project delay in its quarterly report to
19 the Commission appears to be a violation of its obligations
20 under Commission order.

21 Under the circumstances, staff believes that more
22 than a warning is warranted. Aloha counsel is here to answer
23 your questions, and also Mr. Reilly from OPC. And I apologize
24 for not mentioning you in Item 22.

25 **CHAIRMAN CARTER:** Okay. Mr. Wharton, you're

1 recognized.

2 **MR. WHARTON:** Thank you. John Wharton, Rose,
3 Sundstrom & Bentley on behalf of Aloha.

4 To be clear and to be candid, we do not agree that
5 the obligation under the settlement agreement was as staff sees
6 it, or that we have breached an obligation under the agreement.
7 But having said that, I would propose to this Commission
8 earlier today, I believe, you accepted a recommendation where a
9 utility agreed to pay a fine in lieu of the commencement of
10 show cause proceedings.

11 We would propose to pay the fine in the entire amount
12 proposed by the staff in lieu of the commencement of show cause
13 proceedings. I think there is judicial economy to be achieved
14 there. And even though we don't necessarily agree with the
15 staff's characterization of our obligation, we regret that
16 staff feels like that we did not tell them about this when they
17 felt we should have, and it is something that we will keep in
18 mind on a going-forward basis.

19 I think there is an interesting provision in the
20 settlement agreement which Ms. Hartman just mentioned, but I
21 don't think is in the staff rec, and that is that even if the
22 staff believes that an endorsement under the settlement
23 agreement is appropriate, even if they have reached that
24 determination, that then depending on the circumstances they
25 should make a recommendation to you.

1 I would suggest that here there are circumstances to
2 make it appropriate to dispose of this in a quick and
3 judicially efficient way as I have suggested. One is that this
4 did occur nine months ago and that there are many things
5 involved in anion, and this is just one of the things that
6 Aloha has been doing. And I understand it is an important
7 thing to the staff and to the Commission, and I'm not casting
8 aspersions upon that at all.

9 The other factor that I think is worth considering is
10 that staff's assertion of the delay that resulted from this
11 incident is shorter than the delay that we just agreed to in
12 the abatement. And, therefore, again, I'm not saying those are
13 bases for you not to go forward, I'm just saying that I think
14 the proposal we are making to pay the entire amount of the
15 proposed fine in lieu of the commencement of show cause is the
16 best way to handle this.

17 **CHAIRMAN CARTER:** Mr. Reilly.

18 **MR. REILLY:** Just a very few comments. We do agree
19 with staff that it is appropriate to show cause Aloha for its
20 failure to report the delays in its quarterly report. There
21 are customers, obviously, that have contacted our office that
22 feels like the dollar amount should or could have been higher
23 than the \$5,000, but today we wouldn't stand in the way of, you
24 know, the offer of settlement on this matter. But we think
25 staff was correct to bring it to your attention. And that

1 being said, that would be as far as we would go at this point.

2 **CHAIRMAN CARTER:** Thank you, Mr. Reilly.

3 Commissioner Skop.

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

5 And I think less than five minutes ago I made a
6 comment about the Commission taking an active role which the
7 parties could later use against the Commission, and lo and
8 behold, that just happened, because that was thrown right back
9 in our face in terms of the abatement action and the time frame
10 of what we agreed to in abatement versus the time frame in
11 which the alleged violation occurred.

12 And I take offense to that, because I'm tired of the
13 litigation, okay. Just stop right there. Again, that was
14 just -- one moment we make a decision, and the next moment it
15 is used right against us, okay. I have seen that happen at
16 least twice in my short time with the Commission here, and it
17 is frustrating, because, again, we are trying to do things in
18 the best interest of the consumers and in the best interest,
19 and every time at every turn of the corner, and I respect
20 zealous advocacy, but it is just posturing and litigation.
21 And, you know, I have heard from countless consumers that the
22 Commission is afraid of Aloha's attorneys. Well, you know
23 what, you have got attorneys, we have got attorneys, too. Our
24 appellate record speaks for itself, so don't go there with me,
25 all right?

1 That being said, with respect to the proposed fine, I
2 recognize the judicial economies of accepting a settlement
3 agreement as agreed to by OPC. I do feel that the proposed
4 fine is patently insufficient. But, again, I will respect the
5 will of the majority on this. But, again, I think that was
6 just a real illustrative example on how quickly action by this
7 Commission is turned against us by Aloha, and I'm tired of it.

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

9 Commissioners, we are in the question phase.
10 Commissioners, any further questions?

11 Hearing none, we are in debate and discussion.
12 Debate and discussion, Commissioners. Debate and discussion.
13 And to just kind of put us in our proper posture, we have a
14 staff rec and we have had an offer from Mr. Wharton on behalf
15 of the company to forestall litigation or things of that
16 nature. We have had a representation from Mr. Reilly that the
17 Public Counsel would be amenable to accepting the settlement.

18 Am I correct, Mr. Reilly?

19 **MR. REILLY:** Yes. I mean, we have clients obviously
20 that are not happy with the dollar amount, but I think given
21 the whole context of where we are, we wouldn't argue against
22 that today.

23 **CHAIRMAN CARTER:** Okay. Commissioners, what I wanted
24 to do is kind of put us in the posture so we can get into our
25 debate.

1 Commissioner Argenziano, you're recognized.

2 **COMMISSIONER ARGENZIANO:** I'm sorry, Mr. Chair, I
3 guess it prompted a question --

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

5 **COMMISSIONER ARGENZIANO:** -- to OPC.

6 Tell me the benefits or why you have chosen not to do
7 show cause or go to show cause and just settle.

8 **MR. REILLY:** Well, we have a show cause. I mean, I
9 agreed that what they did was not correct and they needed to be
10 show caused. What is before you is the \$5,000. What we are
11 saying is the company said we will go ahead and pay it, so I
12 said that seems like a good resolution of this matter that is
13 before you today.

14 **COMMISSIONER ARGENZIANO:** Okay. Now I've got it,
15 excuse me.

16 Thank you, Mr. Chairman.

17 **CHAIRMAN CARTER:** Thank you. Commissioners, we are
18 in debate.

19 Commissioner Skop, you're recognized.

20 **COMMISSIONER SKOP:** Thank you, sir.

21 A follow-up on that question, Mr. Reilly, but equally
22 in the same sentence you said you have constituents or citizens
23 of the state that would not be equally happy with you accepting
24 that. So, again, if you can give some clarity to that,
25 because --

1 **MR. REILLY:** I think their view would be that the
2 dollar amount is not enough to really provide an incentive for
3 the company to really come forward and testify why or why it
4 did not do what it did. And essentially that is where we are
5 at. I think the company has made a business decision that it
6 is more prudent to spend the \$5,000 and put the matter behind
7 them than it is to go to the next step, you know, and go
8 through the proceeding. And that's all determinative before
9 the Commission. If they want to go forward with this, it
10 really needs to be at a dollar amount, you know, that would
11 be -- you wouldn't be voting for that dollar amount today, you
12 are saying it is subject to being this high. Subject to them
13 proving why it should not be fined an X amount.

14 **CHAIRMAN CARTER:** I'm going to go to Commissioner
15 Argenziano, and then I'm going to come to legal. But, first,
16 Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** The last time you were here
18 with this issue you weren't happy with a certain provision and
19 the Commission managed to give you that provision, and
20 afterwards I remember getting beat up. We all got beat up for
21 trying to help OPC get that position. And now I'm hearing you
22 say that the people that you are representing are not happy.
23 Why wouldn't you then ask for more money? And if we were to
24 grant, say, the 5,000, are we going to get beat up again?
25 Which is what we would probably do on a regular basis anyway,

1 but in trying to understand, why would you then acquiesce?

2 **MR. REILLY:** We tried to work on language to protect
3 the customers on clean up and so forth and we have made a good
4 faith effort of doing that. What happened to derail that was a
5 more fundamental problem with the interconnection. It was a
6 feeling on the part of the customers and some engineering work
7 that has been done, preliminary engineering work that, in fact,
8 a single interconnection was not the way to go. And so that
9 was the reason why the protest really ended up being made.

10 **COMMISSIONER ARGENZIANO:** Commissioner, I'm sorry,
11 that is not really what I meant.

12 What I meant is you had a victory, something that you
13 wanted, and it was, I think, this Commission's idea that they
14 felt that that was necessary, too. And we went out of our way,
15 we did that because we felt it was the right thing to do
16 obviously. And I think my point is that you -- I want to be as
17 straight as I can. I never heard a defense when those people
18 were ready to rack us, put us on a rack and hang us and say,
19 but wait a minute, people, they did give us something we needed
20 and maybe that was a balancing act.

21 Now I'm afraid that while you are having a reluctance
22 that the people are saying we really want more money, and I'm
23 afraid now in one sense that, you know, you say we will go
24 along with that even though the people think it is more. And
25 if we all say, okay, everybody agrees, let's go ahead and do

1 that, that there we go again. And it won't be you who they
2 want to string up, but us. So I guess my reluctance is right
3 now, or my question really is if the people are telling you
4 they would like to see the amount higher, why did you
5 acquiesce?

6 **MR. REILLY:** Well, there is a feeling that this anion
7 exchange has not proceeded as quickly as it should have and at
8 the fault of the company. And so it is in the context of the
9 show cause proceeding that that could be looked at. If the
10 dollar amount, potential dollar amount would have been higher,
11 then there might have been this airing. Of course, now we are
12 moving into this new era of hope where, you know, rather than
13 going down this other road, we are at this fork in the road,
14 literally a fork in the road of hope. That there is light at
15 the end of the tunnel and that there might be the, quote,
16 permanent solution to the Aloha problem. Which, of course, is
17 the FGUA purchase and ultimately Pasco County.

18 So it is kind of in that spirit, I guess, that I and
19 the Office of Public Counsel have made that judgment that given
20 where we are and where we are going that maybe this is the
21 proper thing to do, even though it doesn't give us the airing
22 and the opportunity to really pursue and to discover how Aloha
23 has or has not proceeded as aggressively and properly as they
24 should have to implement anion exchange. Which in the end of
25 it could have been a blessing that they didn't act aggressively

1 and properly if, in fact, a sale takes place and anion exchange
2 is not needed, but that is just where we find ourselves right
3 now.

4 So that is the reason why I personally, as a
5 representative of the customers, took it. I mean, I can take
6 the responsibility of saying I don't stand in the way of the
7 resolution of this at this time. But I felt an obligation
8 still to communicate to you what some of the customer groups
9 have said is, you know, what is this \$5,000? You know, it just
10 isn't enough to really even get Aloha's attention. So that was
11 my dilemma.

12 **CHAIRMAN CARTER:** Commissioners, I wanted to hear
13 from legal before I -- I mean, we are in debate, but I wanted
14 to hear from legal in the context of where we are now. And I
15 hope you guys were paying attention.

16 **MS. HARTMAN:** I just wanted to clarify one point. It
17 is my understanding that Mr. Wharton is offering to settle this
18 in lieu of a show cause order. His point about judicial
19 economy, I would offer that if the Commission decides to go
20 ahead with staff's recommendation, Option 6 would provide some
21 judicial economy where Aloha could just pay the fine and this
22 matter would be resolved.

23 And the second point I wanted to clarify on was our
24 show cause rec was about Aloha's failure to report in its
25 quarterly report. It was merely drafted on that issue, and I

1 just wanted to add that.

2 **CHAIRMAN CARTER:** Commissioner, one second.

3 Commissioner Argenziano, had you completed your questions?

4 Then I'm going to go to Commissioner Skop.

5 **COMMISSIONER ARGENZIANO:** I think so.

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

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

8 And then going back to Mr. Reilly to Commissioner
9 Argenziano's point. I feel the same way, sir. The last time
10 that you guys were in here, we bent over to great lengths to
11 put some protective language in the order to protect consumers.
12 And when it came time for OPC to step up and offer explanation,
13 well, this is what we asked for, this is what we got. I heard
14 nothing. I heard silence. And I'm equally disappointed that
15 OPC would just acquiesce to such a small number when it
16 represents the consumers. Because, again, those are your
17 constituents, the constituents I have to answer to, and I have
18 had numerous discussion with numerous Aloha customers and been,
19 you know, frankly yelled at, and I have taken that because that
20 is part of my job.

21 But at the end of the day, I don't know if I could
22 support that. Because, again, you know, I was very supportive
23 in the past and enacted what you guys wanted. I tried to
24 accommodate you guys to great lengths, but, again, when it came
25 time for OPC to be there for the Commission to say, no, that's

1 what we asked for, I heard silence. And, frankly, I'm not
2 really supportive of \$5,000. I mean, if the number was more
3 significant, and maybe Mr. Wharton wants to make some amends
4 here, and maybe he has got a larger number that he is
5 authorized to put on the table. But, again, I don't know if I
6 can support this in good faith. It just would cause me to lose
7 credibility with all the consumers that I have spoken to.

8 **CHAIRMAN CARTER:** Commissioner McMurrin.

9 **COMMISSIONER McMURRIAN:** Yes. And I have a question
10 for Mr. Reilly, too, along the lines of the points he made.

11 I want to make sure I understand, Mr. Reilly, what
12 you meant about they wanted the airing, and that if we accepted
13 this settlement they wouldn't get that. I guess I want to
14 understand is the airing you are talking about, would it be in
15 the form of a show cause hearing where they get to discuss --
16 and I think it would be limited to how staff pointed out this
17 is really about that Aloha didn't report the delay in their
18 quarterly report. So I guess I just want to make sure I
19 understand is the airing you want to talk about how they didn't
20 report that in their quarterly report, or is it a lot broader
21 than that?

22 **MR. REILLY:** If they had their wishes it would be a
23 little broader than that. I think that when they talked to me
24 they felt like the dollar amount was too small, even for the
25 failure to report. But I think the point is well taken that

1 the subject matter of the show cause is limited to the failure
2 to report.

3 I do want to respond to your comments about Public
4 Counsel's role in that effort. We had language that we
5 suggested in that proceeding to establish rates for the
6 interconnection, and that was not accepted by the parties or by
7 staff or anyone. Then we tried to work out compromise language
8 and we in good faith entered into that compromise language. We
9 did not protest that true-up language. The company did. They
10 participated in that true-up language. They protested the
11 true-up language. We in good faith did that. It didn't give
12 us everything we wanted. It is like any compromise.

13 We hoped and thought, and then we all came back and
14 said is everyone okay on this? And if you will recall what I
15 said was I said we acted in good faith. We worked out the best
16 compromise language we can. I hope it's enough. I'm going to
17 take it back to my clients, but there are concerns, and
18 particularly when it related to the prudence of that single
19 interconnection. It proved to be inadequate and that was part
20 of the compromising that got taken out of our language.

21 Our language was sufficient. But by the time we got
22 through at 7:00 p.m. at night, like any compromise, it had been
23 reduced. And when you asked me are you okay on this, Public
24 Counsel; and I said I hope so, we have engaged in good faith to
25 compromise. And when we went back, we determined that on that

1 fundamental issue of whether they were going to spend money on
2 that single interconnect, that they couldn't live with that,
3 and so that is where we were at.

4 **CHAIRMAN CARTER:** One second. I'm going to go to
5 Commissioner Skop and then Commissioner Argenziano. But as we
6 are in debate, let me just kind of just make one statement.
7 The cost of prosecution of these cases eventually goes to the
8 ratepayers. So, you know, they are not here right now, the
9 Public Counsel is here representing them. So if we start to
10 spin out of control and generate fees and expenses and all like
11 that, that goes to the -- Mr. Reilly and I had this discussion
12 two years ago about it's unfortunate that a lot of the times,
13 and I know I sound like I'm on my soapbox about it, but a lot
14 of the times we go through these proceedings and just generate
15 so much cost in the process of prosecution to where it's more
16 than the actual cost of the rate increase.

17 I just wanted to say that, because I do think that we
18 do need to kind of keep the people in perspective, because a
19 lot of times is that there are some issues that I have and all
20 like that, but my issues are not so important to where I want
21 to increase the cost of prosecution. So with that I'll go to
22 Commissioner Skop and then Commissioner Argenziano.

23 **MR. WHARTON:** Chairman Carter, can I make a very
24 brief comment?

25 **CHAIRMAN CARTER:** Yes, sir.

1 **MR. WHARTON:** There are a lot of things being said in
2 response that -- I just wanted to make one thing clear of all
3 the things that have been said. When our engineer who was on
4 the phone because he had gone home on a medical emergency, we
5 got on the phone with him the next morning, we were very
6 concerned about some things in the true-up, but we made the
7 decision that we were not going to protest if no one else did.
8 We filed that at 4:00 o'clock after we saw the other two. I
9 just wanted you all to know that. We were not going to protest
10 the PAA, but then Better Water Now did and OPC did, so we filed
11 our protest on the true-up.

12 **CHAIRMAN CARTER:** Commissioner Skop, you're
13 recognized.

14 **COMMISSIONER SKOP:** Thank you, Chairman Carter. And,
15 again, that will bring up a separate point in itself, and I
16 will make this brief.

17 To Mr. Reilly, again, when we tried to get the
18 parties that were before us to compromise and get agreement and
19 buy in from everyone, I thought that this Commission had the
20 buy in of all the stakeholders, but unfortunately, as
21 Commissioner Argenziano stated, that soon thereafter the
22 decision we made was heavily criticized. So, again, it seems
23 to be a Catch-22. Whatever we do people are always going to be
24 critical of it.

25 To Mr. Wharton's brief point, a lot of what we did,

1 too, on the interconnection was based upon some representations
2 about a meeting that was supposed to occur, and I know there
3 were some situations where that meeting didn't occur as quick
4 as it had to. But, again, that is another month delay in just
5 getting a meeting. But, again, Aloha is very good at motion
6 practice, for lack of a better word, and so I'm going to
7 institute some of that on my own.

8 I think what is on the table is a compromise to the
9 staff recommendation of in lieu of the \$5,000 show cause that
10 Aloha will just acquiesce and pay the fine pursuant to Option
11 6 on Page 6. And I would respectfully suggest that I would not
12 be in favor of that; but, however, if Aloha wants to agree to
13 paying a \$15,000 fine in lieu of a show cause, I think I could
14 live with that. But other than that, I will not be supporting
15 the fine.

16 **CHAIRMAN CARTER:** Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** Mr. Chair, I really thank
18 you for the indulgence, Commissioners, because sometimes -- I
19 didn't mean to open up a door, but the door kind of needed to
20 be -- you needed to have a peek through it. Because my
21 original point in saying that was that I hear you saying with
22 some, you know, reservation that, look, the people really don't
23 want it, but I'm going to do it anyway.

24 Now, when OPC stands here and says that, okay, we
25 will live with this, that somehow makes me think, well, okay,

1 then maybe that could be done that way. But going back to what
2 you said about, you know, the last minute, at that time, none
3 of us knew what the compromise really would do because it was
4 done so quickly. But if you remember right before the
5 compromise language everything was ready to go without it,
6 okay. We waited. We were here and we waited. What was it,
7 over an hour, and we did it because we felt it was the right
8 thing to do. We weren't sure what the outcome was going to be.

9 And I guess the point of me saying that is that
10 because sometimes there are trade-offs in every process. You
11 say, well, in order to get this, and to give you a yes vote on
12 this, as long as I get that here, I will give you a yes vote
13 with great reservation, and on record even expressing that
14 reservation. And I think the frustration you are hearing is
15 that, I guess, your answer was that, well, because it fell
16 apart afterwards, we didn't know what it really meant. We
17 didn't know that at the time. We were trying to do something
18 that we thought was the right thing to do, and I think the
19 whole reason I brought it up is because the same issue now is I
20 hear reservation, and now I am feeling, well, if I do the same
21 thing and say, okay, if we get that and you are happy with
22 that, tomorrow they are going to want to string us up. Which,
23 of course, is part of our job. But I wanted to straighten that
24 out to say that, you know, we tried very hard to do what we
25 thought was the right thing, and maybe -- and it's, you know,

1 maybe it would have been nicer for you, maybe, to say something
2 like, you know, they tried to help. We didn't know how it was
3 going to turn out.

4 I understand this has been a very frustrating process
5 for this Commission even way before I got here and all the
6 people out there, but I just think that the frustration that we
7 feel is if you are here saying you are can live with that, then
8 that puts us in a precarious position, too. And I'm not sure I
9 heard a really like, yes, we can really live with that. I
10 think I heard it was like, ahh (phonetic), okay. And the only
11 thing I wanted to say is that a vote against would be a vote
12 against a fine.

13 **CHAIRMAN CARTER:** And, Commissioner Argenziano, I
14 appreciate what you said about a vote against this is a vote
15 against a fine. It would be -- really, I mean, sometimes we
16 have even -- I mean, every now and then even I have some lofty
17 rhetoric. But the bottom line is that we don't want to make a
18 bad situation worse. So I always look at the ratepayers, you
19 know. And this process was proceeding, then there was an
20 appeal. We are going to go through the appeal and every time
21 you go through another step there are additional costs, and the
22 bottom line is those costs are going to be passed on. They are
23 going to come back to us saying, okay, because you did this --
24 okay, I'm agreeing with you, I'm agreeing with you.

25 I'm just saying that from a philosophical standpoint

1 where I am is that I believe that in view of what is in front
2 of us with \$5,000 offered to the party as settlement, OPC
3 saying that we can live with that, staff saying it's consistent
4 with their recommendation on Item 6, you know, I think to do
5 more may be more harm than good, Commissioners.

6 **MR. COOKE:** Mr. Chairman, could I just clarify one
7 thing.

8 **CHAIRMAN CARTER:** Mr. Cooke, did I get back to you?

9 **MR. COOKE:** I'm sorry.

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

11 **MR. COOKE:** What staff has recommended is that a show
12 cause order be issued. We are asking you to vote for that.
13 The way our show cause works is we do try to be
14 administratively efficient. And there is a process laid out in
15 the proposed order that says the company can either essentially
16 disagree and come in within 21 days and ask to have a hearing
17 on that and put us to our proof, or they can pay the fine and
18 the show cause is resolved in that fashion. They can also just
19 send in a writing and we would have the staff evaluate what
20 they are telling us and bring a further recommendation.

21 What I heard Mr. Wharton say is he does not want you
22 to vote a show cause, he simply wants to put this all on the
23 table, give the Commission some money and have this all go
24 away. And I don't think staff is -- that's not our preference.
25 I think we -- for the very reasons that he started out with, he

1 said he disagrees with how we interpret the settlement
2 agreement. And the fact that we think that they required
3 detailed information in those quarterly reports that we don't
4 think we really got. I don't want to get into those arguments
5 again down the road. I think staff is asking the Commission to
6 make a decision to show cause or not, and I think there is a
7 way, and this is what Ms. Hartman was pointing to, is under the
8 show cause process if they want to pay the fine and just have
9 it done with, that can happen, but I think that is different
10 from what Mr. Wharton asked.

11 **CHAIRMAN CARTER:** Commissioner Skop.

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

13 And, again, I don't want to be misunderstood on this
14 issue. I think that our general counsel hit the nail on the
15 head, and I fully respect Commissioner Argenziano's point that
16 a vote against -- but the issue at bar is the motion to show
17 cause, and I think that is what -- or the issue before us is a
18 show cause action. And I think, as Mr. Cooke has articulated,
19 that Mr. Wharton and Aloha feel that they would in lieu of us
20 voting up or down on that issue just merely agree to a
21 stipulation where they just pay a fine and solve everyone's
22 problems. And I do see the judicial economy in that, but at
23 the end of day I think that it is also important to send a
24 stern message.

25 Some of the posturing I heard initially with

1 Mr. Wharton to the same regard as our General Counsel pointed
2 out concerned me, also; but then the icing on the cake was
3 tossing back the granting of the 120-day motion to abate and
4 comparing that and contrasting that to the period of time in
5 which they didn't tell us. So I found that to be doubly
6 offensive.

7 Again, I am in support of the show cause motion. I
8 will be in support of that, so I wanted to clarify that because
9 no way they are getting off the hook. The bottom line is I
10 feel that the proposed amount recommended by staff is patently
11 insufficient. A higher number is warranted, and, you know,
12 certainly if Mr. Wharton is authorized to proceed under Option
13 6 of the show cause to remit a fine, and that fine be a much
14 higher number, I think that that would satisfy my concern.

15 I am in favor of the show cause. I do not agree with
16 the amount. I think that we need to send a strong message on
17 behalf of the consumers that the actions of Aloha were
18 unacceptable, and whether it be 15,000, 10,000, it is not going
19 to matter. I mean, we are talking about de minimis amounts. I
20 mean, that is not going to affect their bottom line whatsoever,
21 but they need to be shown that they will be held accountable by
22 this Commission. And, again, I just think that for OPC just to
23 acquiesce to \$5,000 in a staff recommendation, I am not
24 comfortable with it. And, again, I'm in support of the show
25 cause. But, again, as to the amount of the fine, I think there

1 may be differences of opinion, but I think it is very important
2 for this Commission to send a very stern message that we need
3 to solve this problem, and we expect candor and communication,
4 open communication from the utilities. And, again, I will be
5 in support -- just clarify my prior position in support of the
6 show cause motion. I do not agree with the amount.

7 **CHAIRMAN CARTER:** Commissioner Argenziano.

8 **COMMISSIONER ARGENZIANO:** To procedure, because that
9 is exactly what I'm saying, also. If you are voting -- I mean,
10 we are voting -- what we are voting on is to show cause, right,
11 an order, a show cause order. But within staff's
12 recommendation they limit it to 5,000. Would we need to make a
13 motion to increase that, otherwise voting against would be
14 against the show cause. That's what I was trying to bring out.
15 So we would need a motion to increase the amount, and that's
16 the way that would have to be done procedurally?

17 **CHAIRMAN CARTER:** Yes. Commissioners, as I said
18 before --

19 **COMMISSIONER EDGAR:** Mr. Chairman, I am so sorry, so
20 sorry to interrupt, and I recognize that we have been here a
21 long time and we have taken a lot of breaks, so I'm going to
22 apologize, but I'm going to make a personal request, which is I
23 need to make a phone call for child care duty. I really
24 thought we would be out of here before now. Not a complaint,
25 but I really did. If I could ask for a two-minute break so

1 that I could take care of my family and be able to listen to
2 the further discussion, I would be most appreciative.

3 **CHAIRMAN CARTER:** We will you two PSC minutes.

4 **COMMISSIONER EDGAR:** Thank you. I'm on my way.

5 Thank you. I apologize.

6 (Recess.)

7 **CHAIRMAN CARTER:** We are back on the record.

8 Commissioner Argenziano, you are recognized.

9 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.

10 I think that Commissioner Skop has expressed his
11 frustration and feelings, and I was waiting, but I think I'm
12 just going to go ahead and say I think I would like to move
13 that we accept the recommendations to the show cause order but,
14 as my colleague has indicated, to up the fine, or violation
15 fine, whatever you want to call it, to 15,000. So that is my
16 motion, because I think Commissioner Skop made some very good
17 points.

18 **COMMISSIONER SKOP:** I would happily second that.

19 **CHAIRMAN CARTER:** Commissioners, we have a motion and
20 a proper second. We are in debate. We are in debate.

21 Commissioner Edgar, you're recognized. I hope
22 everything worked out okay for you.

23 **COMMISSIONER EDGAR:** Yes. And, thank you. I thank
24 you all for your patience with me.

25 Commissioner Skop, you had laid out some points.

1 Could I just ask you to clarify just for my further
2 understanding what the 15,000 -- realizing it was Commissioner
3 Argenziano's motion, but that you had mentioned that amount,
4 and just kind of what that would be based upon? I heard you
5 say send a message, but I would like to have something maybe a
6 little more tied to the facts that would kind of take the 5,000
7 to 15,000. And I'm not trying to be argumentative, I'm just
8 trying to think through a logic.

9 **COMMISSIONER SKOP:** I agree. And thank you so much
10 for expressing that. And, again, I apologize for my
11 frustration, but I think my frustration stems from all the
12 customers that I have spoken to and listened to their concerns.

13 I think the statutory basis is probably a good one.
14 I mean, we could start with Section 367.161, Subparagraph 1,
15 Florida Statutes, which expressly authorizes the Commission to
16 assess a penalty of not more than \$5,000 per day for each
17 offense. You know, I think that there is probably a couple of
18 days that kind of went on there that perhaps they didn't
19 disclose, and I think I'm probably being ultraconservative.
20 But, you know, three days or whatever, 15,000. I mean, we have
21 had numbers that were arbitrary today. To me that is just as
22 good as any number.

23 You know, certainly we can argue about it. It
24 wouldn't surprise me whatsoever to see Aloha go to hearing just
25 on the very basis of the issue. But, again, I'm trying it

1 uphold the consumer interest here, and I just think it is
2 reprehensible for a material fact to be omitted from being
3 disclosed to this Commission. And, like I say, certainly I'm
4 open to Mr. Wharton, maybe he can make the peace, maybe he can
5 suggest that he would be willing to reconsider his 5,000 and
6 kind of offer a settlement, but I do think it is important for
7 us to vote on the motion to show cause, and we have the pending
8 motion properly seconded with 15,000.

9 But I think that the basis is statutory. However,
10 you want to interpret it, I think that we have sufficient
11 discretion to affix an amount, and I do think that even 15,000
12 would be conservative, but it certainly sends a more powerful
13 message than 5,000.

14 **CHAIRMAN CARTER:** We are in debate, Commissioners.
15 Any further debate?

16 Commissioner Argenziano, you're recognized.

17 **COMMISSIONER ARGENZIANO:** Just a comment to the
18 amount, and I think after what the Commission -- how many years
19 this has been going on, long before I got here. Many of you
20 had a lot to do to deal with. And after just so many repeat
21 type problems, and I think that the 15,000 may -- and this may
22 sound weird, but I think the anguish that the customers have
23 suffered, and to just go on knowing that Dr. Levine was not up
24 to par, I think, all that time, that length of time that the
25 company could have just called us and said, hey, it looks like

1 we may have a problem. I think that time justifies the 15,000.
2 I will call it pain and suffering of the Commissioners.

3 **CHAIRMAN CARTER:** Commissioners, we are in debate.
4 Commissioner McMurrian, you're recognized.

5 **COMMISSIONER McMURRIAN:** Thank you. I agree with
6 those comments, Commissioner Argenziano.

7 And, you know, I struggle a little bit with the basis
8 for coming up with 15,000, too, but I think that the statute
9 does give a lot of leeway there, because it is up to \$5,000 a
10 day. I guess in my mind I can sort of say that 5,000 for the
11 month of July, 5,000 for whenever they didn't report, and 5,000
12 for the month of August. That takes us to September 5th when
13 they did notify us.

14 But in my mind there was a long period of time even
15 before July that I think we should have been informed that
16 there was more of a problem there, and that Aloha had a duty
17 to, I think, try to get assurances in writing from the
18 university or from Dr. Levine herself. I think that you want
19 to go on people's oral promises, but I don't think that in this
20 kind of environment, particularly with what is at stake and
21 what the customers have gone through that you really can do
22 that. I think that Aloha should have done more, and so I think
23 15,000 is supportable.

24 **CHAIRMAN CARTER:** Commissioners, we are in debate.
25 Commissioner Skop, you're recognized.

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

2 And I would like to commend Commissioner McMurrian
3 for that level-headed analysis.

4 **CHAIRMAN CARTER:** She is not a lawyer, but she plays
5 one on TV.

6 **COMMISSIONER SKOP:** She would make a great attorney:
7 But, again, I think there is -- to Commissioner
8 Edgar's point, more than sufficient justification under the
9 statute to support that. In fact, I even think the amount of
10 15,000 would be generous. I mean, I would be willing to go
11 calculate the days and maybe we might be asked to do that in
12 the course of a protest or a response to a show cause. But
13 hopefully it will send the appropriate message and we can deal
14 with it either the easy way or the hearing way.

15 **CHAIRMAN CARTER:** Commissioners, any further debate?
16 Any further debate?

17 Hearing none, we have a motion that has been properly
18 seconded. All those in favor let it be known by the sign of
19 aye.

20 (Unanimous affirmative vote.)

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

23 * * * * *

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

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

19 DATED THIS 21st day of April, 2008.

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