

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates  
for Seven Springs System in Pasco County by  
Aloha Utilities, Inc.

DOCKET NO. 010503-WU  
ORDER NO. PSC-05-0235-PHO-WU  
ISSUED: March 2, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on February 24, 2005, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

F. MARSHALL DETERDING, ESQUIRE, and JOHN WHARTON, ESQUIRE,  
Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee,  
Florida 32301  
On behalf of Aloha Utilities, Inc.

CHARLES BECK, ESQUIRE, Office of Public Counsel (OPC), c/o The Florida  
Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-  
1400  
On behalf of The Citizens of the State of Florida.

DR. V. ABRAHAM KURIEN, 7726 Hampton Hills Loop, New Port Richey,  
Florida 34654  
On behalf of himself.

MR. HARRY HAWCROFT, 1612 Boswell Avenue, New Port Richey, Florida  
34655  
On behalf of himself.

MR. EDWARD O. WOOD, 1043 Daleside Lane, New Port Richey, Florida  
34655  
On behalf of himself.

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On behalf of the Florida Public Service Commission.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

## **PREHEARING ORDER**

### **I. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

### **II. CASE BACKGROUND**

Aloha Utilities, Inc. (Aloha or utility), is a Class A water and wastewater utility in Pasco County. By Order No. PSC-02-0593-FOF-WU (Final Order), issued April 30, 2002, this Commission required Aloha, among other things, to make improvements to Wells Nos. 8 and 9, and then to all its wells, to implement a treatment process designed to remove at least 98 percent of the hydrogen sulfide in its raw water. A deadline of December 31, 2003, was established for these improvements to be in place. Aloha appealed the Final Order and was granted a partial stay pending the appeal. Accordingly, by operation of law, the date for making the plant improvements was extended to February 12, 2005.

On June 9, 2004, Aloha filed a motion to modify the requirements of the Final Order, requesting that the requirement to remove 98% of hydrogen sulfide from the raw water should be replaced with a requirement that Aloha make improvements as needed to meet a goal of 0.1 mg/L (milligrams per liter) of sulfides in its finished water as that water leaves the treatment facilities of the utility, and that this standard be implemented no later than February 12, 2005.

By Proposed Agency Action Order No. PSC-04-0712-PAA (PAA Order), issued July 20, 2004, the Commission proposed to approve Aloha's request. V. Abraham Kurien, Harry Hawcroft, and Edward Wood (the Customers) filed a timely Petition protesting several, but not all, provisions of the PAA Order.

The Commission issued a partial Consummating Order, Order No. PSC-04-0831-CO-WS, on August 25, 2004, which consummated the portions of the PAA Order that were not protested and recognized the portions of the PAA Order contested by the Customers.

A Prehearing Conference was held on February 24, 2005. The customers attended by telephone. The case is set for hearing in Tallahassee on March 8, 2005.

### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes. This hearing will be governed by said Chapter and Chapters 120, Florida Statutes, and Chapters 25-30, 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore,

confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

#### V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

#### VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. Aloha reserves the right to seek entry into evidence certain Commission Staff members' depositions or to seek to elicit certain Staff testimony at the time of the hearing. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
V. Abraham Kurien	OPC/Customers	1-3
Audrey Levine, PhD., P.E.	Aloha	1-3
David W. Porter, P.E.	Aloha	1-3
John R. Sowerby, P.E.*	Staff	1 and 3
<u>Rebuttal</u>		
V. Abraham Kurien	OPC/Customers	1-3
David W. Porter, P.E.	Aloha	1-3

\* The testimony of Staff witness John R. Sowerby will be taken no earlier than 1:30 p.m. on March 8, 2005.

VIII. BASIC POSITIONS

**ALOHA:** The utility currently meets a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the Utility. Aloha is in the process of completing improvements to its wells 8 and 9 and then to its other wells. Compliance with such goal should 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.

**OPC/  
CUSTOMERS:** Order No. PSC-02-0593-FOF-WU was issued in April 2002 for the specific purpose of significantly reducing the incidence of "black water" and related complaints. That Order required removal of 98% of hydrogen sulfide from raw water in Aloha's wells from which underground water is pumped and processed using chlorination as the sole method. On October 18, 2002 Aloha requested modification of the Order, because it felt that achieving the 98% removal standard was at best very expensive and at worst impossible. On July 23, 2003 OPC submitted a letter stating that the "Citizens agree that the 98% removal standard should be replaced with other standards". The letter suggested the use of the regional standard that the Tampa Bay Water Authority (TBW) uses of a total sulfide level of 0.1mg/L . The same letter noted, "Additional standards may also be appropriate depending on the final audit report findings". On June 9, 2004 Aloha requested that the "fourth ordering paragraph of Order No PSC-02-0593-FOF-WU be revised to read as follows:

"Ordered that Aloha Utilities, Inc. shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal

of 0.1mg/l of sulfides in its finished water as that water 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 should implement this standard no later than February 12, 2005". (underlining added).

This change distorts the Tampa Bay Water Standard. The TBW standard states "Water supplied from the Authority's System shall be sampled annually at a minimum at the Point(s) of Connection for the following parameters". TBW supplies water to its member customers and the water is sampled at the point of connection into the customer's pipes. Instead, Aloha wants the sampling to be done "after all treatment systems and before entry of such water into the transmission and distribution system of the Utility", which is well before (in some cases miles away) it reaches the point of connection with its customer's pipes.

This is a major departure from the TBW standard. TBW maintains its standard to the point of connection with its customer's pipes and not at its treatment facility. If the intent of the Commission is to ensure that Aloha adopts the same standard as the TBWA, which the Citizens agreed to on July 23, 2003, then the language of the modification must be different from that suggested by Aloha and adopted by the Commission in its vote on June 29, 2004.

A report prepared by Dr. Audrey Levine in February 2004 states that a "trace amount of hydrogen sulfide was detected in the influent to the main plant (0.12mg/L) during the November sampling". The main plant receives its influent from treated water from wells 1, 2, 3 and 4. On November 12, 2003 the samples that were taken after the treatment facilities from these wells showed the levels of hydrogen sulfide to be less than 0.01 mg/L at all wells. Yet the hydrogen sulfide level in the influent into the main plant had risen to 0.12 mg/L during the transmission from the wells into the main plant reservoir. This strongly indicates re-formation of hydrogen sulfide is occurring within Aloha's transmission or distribution system, before the water reaches the customer's pipes. This will cause black water. Therefore, a standard of 0.1mg/L maintained at "treatment systems and before entry of such water into the transmission and distribution system of the Utility" (the modification of TBW standard recommended by Aloha and voted upon by the Commission) is no guarantee to the customers that such low levels will be maintained to the point of connection with the customer's pipes. Aloha Utility must be held responsible for the quality of its water throughout its transmission and distribution system to the point of connection with its customer's pipes, the domestic side of the meter, as TBW holds itself responsible. Since re-formation of hydrogen sulfide is considered to be the major reason for corrosion of pipes and formation of black water, the standard should be maintained to the point of connection with the customer's pipes – the domestic meter.

Since Aloha does not have a central treatment plant and water from different wells are pumped into the distribution manifold there is a possibility that hydrogen sulfide levels are variable in different parts of Aloha's transmission and distribution system. Therefore it is important to check hydrogen sulfide levels at different sites, at the domestic meter on a rotational basis. Since hydrogen sulfide levels fluctuate seasonally, monthly tests are also necessary for ensuring compliance to the standard. Once a year sampling is not adequate for process control.

Aloha will soon receive water from Pasco County Water utility. Since Pasco County has not agreed to ensure that the water delivered to Aloha will meet the TBW standard, there is a possibility that such water may contain higher concentrations of hydrogen sulfide than the TBW standard. Mixing of water from Pasco County Utility and water from the Aloha wells will take place; without careful blending and further treatment, the mixed water may contain more hydrogen sulfide levels than the TBW water standard. This lack of uniformity of hydrogen sulfide levels in Aloha's distribution system may result in persistence of the pattern of black water distribution now seen in the Seven Springs area.

Since Aloha does not undertake monitoring of hydrogen sulfide levels as part of process control and oxidant levels are manually adjusted, there is always the possibility of a mismatch between the two. An adequate chlorine residual is no guarantee of conversion of all hydrogen sulfide to sulfate. Elemental sulfur is almost always a likely intermediate product. In view of the association between elemental sulfur and black water, recently emphasized by the latest FDEP guidelines, it seems unwise not to include elemental sulfur within the standard in any attempt to reduce the incidence of black water.

**STAFF:** The information gathered through discovery and prefiled testimony indicates, at this point, that some additional treatment as regards sulfides in the water is required, and that testing to determine the effectiveness of the treatment is required. However, at this point in time, staff takes no position on where the tests should be taken, and the frequency and number of the tests. Except where staff has testified, staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

#### **IX. ISSUES AND POSITIONS**

**ISSUE 1:** Should the reference to sulfide in "finished water" in the proposed agency action order be stated as a maximum contaminant level for total sulfides of 0.1 mg per liter of delivered water at the point of its entry into the domestic system at the domestic meter?

**POSITIONS**

**ALOHA:** No, the standard can only reasonably be stated as a goal. Stated as a maximum contaminant level for total sulfides in and of itself is a substantially different requirement and imposes a limit that is not reasonable and is unprecedented for any water company anywhere in the United States. The maximum contaminant level is a term of art and implies other action required if an entity fails at any point to meet that level. In addition, the proposal to make that standard applicable at the point of delivery into the domestic system at the domestic meter is unreasonable and inappropriate. Testing Alone would be expensive and unreasonable and would provide no information which the Utility could utilize to make further adjustments to its process controls, and would therefore be useless and a waste of money.

This proposed issue is clearly at odds with the unchallenged, unappealed Consummating Order Issued by the Commission on August 25, 2004. In addressing the Petitions, that Order declared that Order No. PSC-04-0712-PAA-WS has become final and effective to the extent that it ... modifies the fourth ordering paragraph of Order No. PSC-02-0593-FOF-WS to read that Aloha Utilities, Inc. shall make improvements to its well 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/1 of sulfides in its finished water. Issue 1, attempts to improperly revisit that exact issue (whether the 0.1 mg/1 should be stated as a maximum contaminate level or whether it should be a goal). There is no outstanding issue in that regard and to suggest that this hearing will revisit that issue is completely improper.

**OPC/**

**CUSTOMERS:** Yes, the reference to sulfide in "finished water" in the proposed agency action order should be stated as a maximum containment level for total sulfides of 0.1 mg per liter of delivered water at the point of its entry into the domestic system at the domestic meter. (Kurien)

**STAFF:** Pending further development of the record, staff takes no position as to whether the reference to sulfide in the "finished water" for a level no greater than 0.1 milligrams per liter (mg/L) should be a maximum contaminant level, a goal, or an indication that some further action is required. Also, staff takes no position as to where the "finished water" should be tested, and also takes no position on the frequency and number of tests to be taken. (Sowerby)

**ISSUE 2:** **Should the improvements be such that sulfide present in raw water or generated during treatment and transmission be removed, not converted, to a level not to exceed 0.1 mg/L in finished water delivered at the point of entry into the domestic system?**



**POSITIONS**

**ALOHA:** No. Such improvement is contrary to any requirement imposed on any utility any where in the state and is directly contrary to the stated position of the Public Service Commission that it will not “micro-manage” the Utility in determining the method it chooses to come into compliance with a standard. This additional requirement for removal rather than conversion of sulfides entails an expenditure of many millions of dollars and centralization of the Utility’s existing facilities with no demonstrated benefit other than the allegations of a non-expert individual former customer.

This proposed issue suggests an issue which is not properly before the Commission. In Order No. PSC-04-0712-PAA-WS, the Commission specifically declared that its practice is “not to micro manage the business decisions of regulated companies, but to instead focus on the end-product goal. In keeping with this established practice, we decline to prescribe the specific treatment process to be used in this case.” The issues in Dr. Kurien’s positions are legally limited to Proposed Agency Action as set forth in the Commission’s Order, not to a mere musing in the Order about the Commission declining to break its longstanding practice of not micro managing treatment processes for utilities. The ordering paragraphs for Order No. PSC-04-0712-PAA-WS does not even discuss this issue. That is because when the Commission issues a PAA, its ordering paragraphs and the Order itself, talks about what the Commission will order, not what it has decided not to do. The Commission’s decision not to issue an order micro managing Aloha’s treatment options is consistent with its longstanding practice, consistent with its past treatment of Aloha, and is not a matter properly made an issue in this proceeding by the Petitions.

**OPC/**

**CUSTOMERS:** Yes, the improvements should be such that sulfide present in raw water or generated during treatment and transmission be removed, not converted, to a level not to exceed 0.1 mg/L, in finished water delivered at the point of entry into the domestic system, if this can be done economically. (Kurien)

**STAFF:** Pending further development of the record, staff takes no position at this time.

**ISSUE 3:** **Should compliance with such requirements be determined based upon samples taken at least once a month at a minimum of two sites at domestic meters most distant from each of the multiple treatment facilities with such sites rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted?**

**POSITIONS**

**ALOHA:** Compliance with the goal of 0.1 mg/L contained in Order No. PSC-04-0712-PAA-WS should be determined by utilizing the standard methodologies approved

for the detection of sulfides in the finished water conducted in accordance with the standard methods for the profession and the industry. Such samples should be undertaken at least annually at the point of connection of Aloha's treatment systems and before entry of such water into the transmission and distribution system of the Utility. (Witnesses Porter and Levine)

**OPC/**

**CUSTOMERS:** Yes, compliance with such requirements should be determined based upon samples taken at least once a month at a minimum of two sites at domestic meters most distant from each of the multiple treatment facilities. Such sites should be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted. (Kurien)

**STAFF:** Pending further development of the record, staff takes no position at this time. (Sowerby)

**LEGAL ISSUE**

**ISSUE 4:** ***Does the Commission have the authority to regulate, impose, or establish drinking water standards, maximum contaminant levels, action levels, or treatment technique requirements?***

**POSITIONS**

**ALOHA:** No.

**OPC/**

**CUSTOMERS:** Yes.

**STAFF:** Yes, as evidenced by the First District Court of Appeal's affirmance of the Final Order, Order No. PSC-02-0953-FOF-WU, which required that 98% of the hydrogen sulfide in the raw water be removed.

**X. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Direct			
V. Abraham Kurien	OPC/Customers	VAK-1	No Objection Statement from Aloha Utilities Citizens Advisory Committee, July 21, 2003
V. Abraham Kurien	OPC/Customers	VAK-2	Letter to Marshall Willis from Atty. Steve Burgess, July 23, 2003
V. Abraham Kurien	OPC/Customers	VAK-3	Letter from V. Abraham Kurien, M.D. to Atty. Steve Burgess of OPC, June 13, 2004, submitted by reference to PSC on

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			June 16, 2004
V. Abraham Kurien	OPC/Customers	VAK-4	PSC Memorandum, June 17, 2004 – Page 19
V. Abraham Kurien	OPC/Customers	VAK-5	Phase II Audit Report by Audrey A. Levine, Page iv
V. Abraham Kurien	OPC/Customers	VAK-6	Letter from Mr. David Porter to Mr. Douglas Bramlett, September 11, 1997
V. Abraham Kurien	OPC/Customers	VAK-7	“Oxidation Coupled With Filtration For Removal of Hydrogen Sulfide from Groundwater” by Dr. Audrey A. Levine, Blake J. Raymer, Johna Jahn, Arnold Becken, American Water Works Association, Water Quality Technology Conference, 2003
V. Abraham Kurien	OPC/Customers	VAK-8	Monthly Operating Reports Submitted by Aloha to DEP
V. Abraham Kurien	OPC/Customers	VAK-9	“Turbidity Formation During Hydrogen Sulfide Chlorination”, Troy Lyn et al. American Water Works Association Proceedings 1993, Water Quality Technology Conference, Miami 1993, Part II, Pages 981, 984 and 985.
V. Abraham Kurien	OPC/Customers	VAK-10	FPSC Vote Sheet, June 29, 2004
V. Abraham Kurien	OPC/Customers	VAK-11	Memorandum from Mr. Devlin to Dr. Mary Bane
V. Abraham Kurien	OPC/Customers	VAK-12	E-mail correspondence between Dr. Kurien and Mr. Devlin
V. Abraham Kurien	OPC/Customers	VAK-13	Letter to PSC Chairman Baez from V. Abraham Kurien, July 6, 2004
V. Abraham Kurien	OPC/Customers	VAK-14	Letter to OPC Atty. Charles Beck from V. Abraham Kurien, August 22, 2004 for transmission to PSC Atty. Rosanne Gervasi
V. Abraham Kurien	OPC/Customers	VAK-15	Letter from Mr. Tom Walden to Dr. Christine Owen of TBW for clarification for TBWA standards, September 1, 2004
V. Abraham Kurien	OPC/Customers	VAK-16	Comments on Feasibility of Monitoring for Hydrogen Sulfide at Customer Meters: Report from Mr. David Porter to Mr. Stephen Watford, forwarded to PSC, September 3, 2004

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
V. Abraham Kurien	OPC/Customers	VAK-17	Presentation before the PSC Hearing, April 8, 2004, by Dr. V. Abraham Kurien
V. Abraham Kurien	OPC/Customers	VAK-18	Filing before the PSC, August 10, 2004: Petition Requesting Hearing and Protest of Proposed Agency Action
Audrey Levine, PhD., P.E.	Aloha	AL-1	Resume consisting of 15 pages
<u>Rebuttal</u>			
V. Abraham Kurien	OPC/Customers	VAK-19	Aloha's own records of Flushing Reports in the year 1999 with an analysis of the findings by Dr. Kurien
V. Abraham Kurien	OPC/Customers	VAK-20	The Pasco County Black Water Study, submitted by Van Hoofnagle, August 9, 1999 and an analysis of the findings by Dr. Kurien
V. Abraham Kurien	OPC/Customers	VAK-21	Phase II Audit Report by Dr. Levine, Pages 27-32
V. Abraham Kurien	OPC/Customers	VAK-22	Scanning Electron Micrograph, Figures 31, Phase II Report
V. Abraham Kurien	OPC/Customers	VAK-23	Phase II Report, Page 20, Figure 14b
V. Abraham Kurien	OPC/Customers	VAK-24	Phase I Report, Page 20
V. Abraham Kurien	OPC/Customers	VAK-25	Phase I Report, Page 10
V. Abraham Kurien	OPC/Customers	VAK-26	Tampa Bay Water Exhibit D, Action Level Notes
V. Abraham Kurien	OPC/Customers	VAK-27	Docket No. 020896-WS, PSC Letter dated March 29, 2004 Staff Data Request Data submission by Aloha Utilities, Inc.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

#### XI. PROPOSED STIPULATIONS

The parties are agreed that Staff witness John R. Sowerby shall not be required to testify prior to 1:30 p.m. on March 8, 2005.

The parties further agree that upon issuance of a final order subsequent to the hearing on this matter, this docket should not be closed until the pending appeal on the refund issue has concluded, and the time for filing an appeal on the final order in this matter has run.

XII. PENDING MOTIONS

Staff's Motion to Quash Subpoenas and for a Protective Order in opposition to Aloha's notice of depositions and subpoenas to depose the following five non-testifying staff members: Roseanne Gervasi, Marshall Willis, Patti Daniel, Connie Kummer, and Tom Walden.

XIII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party. Also, the stipulation that Staff witness John R. Sowerby shall not be required to testify prior to 1:30 p.m. on March 8, 2005 is noted.

Aloha objected to the first two issues listed in Section IX., Issues and Positions, above, and proposed two separate issues in its Prehearing Statement. Upon review of the protest of the customers, the three issues listed are the exact issues raised in the customers' protest. Therefore, use of the utility's two proposed separate issues is rejected, and the issues shall be as stated in the customers' protest and as set forth in this order.

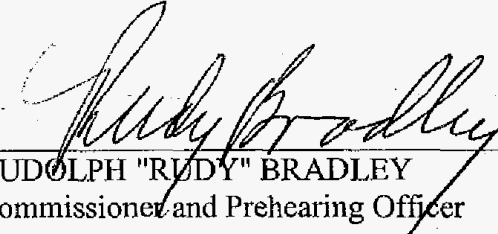
At the Prehearing Conference, Aloha made an *ore tenus* motion requesting a continuance to allow the Commission to clarify the issues in this proceeding, and argued no prejudice would result from the same. After allowing oral arguments, this motion was denied. In addition Aloha made a different *ore tenus* motion requesting a continuance to allow Aloha an opportunity to appeal the Prehearing Order. After allowing oral arguments, this motion was also denied.

Subsequent to the denial of the above motions, Aloha moved to add the following legal issue: "Does the Commission have the authority to regulate, impose, or establish drinking water standards, maximum contaminant levels, action levels, or treatment technique requirements?" This request was granted, and that issue was added as a legal issue and is issue number four.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
2nd day of March, 2005.



RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

( S E A L )

RRJ

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.