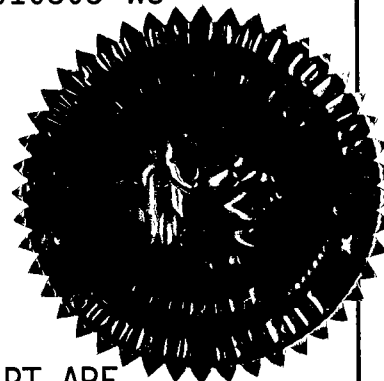


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010503-WU

In the Matter of

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



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PROCEEDINGS: PREHEARING CONFERENCE
BEFORE: COMMISSIONER MICHAEL A. PALECKI
Prehearing Officer
DATE: Thursday, December 20, 2001
TIME: Commenced at 9:30 a.m.
Concluded at 10:55 a.m.
PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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1 APPEARANCES:

2 F. MARSHALL DETERDING, Rose, Sundstrom & Bentley,
3 2548 Blainstone Pines Drive Tallahassee, Florida 32301,
4 appearing on behalf of Aloha Utilities, Inc.

5 MARK LAPP, 2379 Broad Street, Brooksville,
6 Florida 34604-6899, appearing on behalf of the
7 Southwest Florida Water Management District
8 (SWFWMD).

9 STEPHEN C. BURGESS, Office of Public
10 Counsel, 111 West Madison Street, Room 812,
11 Tallahassee, Florida 32399-1400, appearing on behalf
12 of the Citizens of the State of Florida.

13 REPRESENTATIVE MIKE FASANO, 8217
14 Massachusetts Avenue, New Port Richey, Florida
15 34653, on behalf of himself.

16 RALPH R. JAEGER, and LORENA ESPINOZA,
17 Florida Public Service Commission, Division of Legal
18 Services, 2540 Shumard Oak Boulevard, Tallahassee,
19 Florida 32399-0870, appearing on behalf of the
20 Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER PALECKI: Call the prehearing to order.
(Sound system off.)

COMMISSIONER PALECKI: It's my understanding that the microphone was not active, so if you could please read the notice again, Mr. Counsel, I would appreciate it.

MR. JAEGER: Okay. Pursuant to notice issued December 3rd, 2001, this time and place has been scheduled for a prehearing conference in Docket Number 010503-WU.

COMMISSIONER PALECKI: And we will take appearances, starting with Mr. Deterding.

MR. DETERDING: F. Marshall Deterding of the law firm of Rose, Sundstrom & Bentley, here on behalf of Aloha Utilities, Inc.

MR. BURGESS: I'm Steve Burgess here for the Public Counsel's office, representing the citizens of the State of Florida.

MR. JAEGER: I'm Ralph Jaeger, and with me is Lorena Espinoza representing the staff of the Florida Public Service Commission.

COMMISSIONER PALECKI: And it's my understanding that we have at least one and perhaps other persons on the phone at this time. Could you please identify yourself for the record.

REPRESENTATIVE FASANO: Hi, this is Mike Fasano.

COMMISSIONER PALECKI: Hello, Representative Fasano.

1 REPRESENTATIVE FASANO: How are you this morning?

2 COMMISSIONER PALECKI: Good, thank you.

3 REPRESENTATIVE FASANO: Good, thank you.

4 MR. LAPP: Also Mark Lapp, L-A-P-P, General Counsel,
5 Southwest Florida Water Management District.

6 COMMISSIONER PALECKI: Thank you. Are there any
7 preliminary matters at this time?

8 MR. JAEGER: Yes, Commissioner. I believe you have
9 indicated that you would excuse Edward Wood, and that I think
10 Office of the Public Counsel for the purposes of this
11 prehearing conference will be representing his interest, and so
12 he has been excused from attending the prehearing conference.

13 COMMISSIONER PALECKI: Yes, I will excuse Mr. Wood
14 from attending the prehearing conference, and it is my
15 understanding that Mr. Wood has adopted the positions of the
16 Office of Public Counsel on all issues.

17 MR. JAEGER: Also, as we noted, Representative Fasano
18 is here by telephone, and he filed his petition for
19 intervention on December 17th. An order hasn't been issued. I
20 have asked Mr. Deterding if he is going to file a response or
21 have any objection to that, and he said he would let me know.
22 But right now Representative Fasano, it looks like he will be
23 an intervenor and that order should be issued shortly.

24 COMMISSIONER PALECKI: Mr. Deterding, do you intend
25 to object to the intervention of Representative Fasano?

1 MR. DETERDING: Commissioner, I apologize, we have
2 not had an opportunity to look at that, given the recent filing
3 and the fact that we are working diligently on getting our
4 rebuttal testimony in this Friday. I doubt it. But I do want
5 to reserve my opportunity to respond to that petition, at least
6 for the next couple of days until I get a chance to discuss it
7 with my client.

8 COMMISSIONER PALECKI: I understand. We will,
9 therefore, simply recognize that Representative Fasano has
10 filed this petition for intervention. It was filed December
11 17th, 2001. We won't make a ruling on the motion to intervene
12 at this time. Any other preliminary matters?

13 MR. JAEGER: I believe we have some stipulations at
14 the end that we will hit when we get to that section. Let me
15 see here. Also, I believe -- I guess we can do the rest when
16 we get into the changes to the prehearing order.

17 COMMISSIONER PALECKI: All right.

18 MR. DETERDING: Let me ask one thing, I think, for at
19 least my clarification and perhaps for Mr. Burgess', as well.
20 Having not had a chance to review this in great detail since I
21 received it at 5:00 o'clock yesterday, I assume that this draft
22 is basically subsuming what we had done at the pre-pre with the
23 additions that Mr. Burgess forwarded to you in his memo and my
24 letter to you of yesterday's date.

25 MR. JAEGER: Okay. Yesterday afternoon Mr. Deterding

1 did forward me the positions, the witnesses, and he also
2 requested that six issues be added. Also, yesterday afternoon
3 Mr. Burgess requested that one issue be added. Staff has
4 reviewed those issues and we definitely think four of Mr.
5 Deterding's issues need not be added. First of all, one was
6 just that we had a stipulation on what the number of projected
7 ERCs would be, and that is Stipulation 19, so I think everybody
8 agreed that that does not need to be an issue.

9 The other was at the pre-pre we decided that his
10 Issues 20B and 20C were subsumed in 20, and that the position
11 in 20 would take care of that. And I don't see where that has
12 changed. You had the same things in 20B and 20C that were in
13 Issue 20.

14 MR. DETERDING: Well, I didn't mean for us to get
15 into those specifics right here until we got to those issues.
16 I just wanted to get a general understanding.

17 MR. JAEGER: We put in -- the reason you got the
18 prehearing order, draft prehearing order yesterday at 5:00 was
19 we did put in all of your new positions, all of your staff
20 witnesses, we also tentatively put in two of the issues that
21 you put in, and the 27A that you suggested we put there, but we
22 didn't think it needed to be a separate issue.

23 MR. DETERDING: I'm just trying to reach a level of
24 comfort as to how this differs from what we talked about at the
25 pre-pre and that the only way in which it differs is for those

1 changes that we all discussed or that were forwarded to you and
2 then we will deal with Issues 20, 21, and 27 subparts when we
3 get there.

4 MR. JAEGER: We have put everything in that you sent
5 us yesterday. We put in Mr. Burgess' new issue as Issue 39,
6 and all the positions, all the witnesses have been put in.

7 MR. DETERDING: So the only other changes are, I
8 believe, there has been a minor change to -- or minor, there
9 has been a change to Stipulation 18. But other than that, it
10 is basically what we discussed or what we forwarded to you.

11 MR. JAEGER: That is correct.

12 MR. DETERDING: Okay. That's fine. I just wanted to
13 get that clear so I think we can move much quicker through
14 this.

15 COMMISSIONER PALECKI: Mr. Jaeger, Mr. Deterding
16 believes we can address these as we go through the individual
17 issues. Is that satisfactory?

18 MR. JAEGER: That's fine.

19 COMMISSIONER PALECKI: Let me just express what my
20 concern is with regard to additional issues. We are on a very
21 tight time schedule, and I have grave concerns as to any
22 additional issues that might require additional discovery,
23 depositions, and perhaps supplemental testimony. I don't want
24 to move this hearing out, so I just want you to know my
25 concerns beforehand. We will address each of these issues in

1 the order they appear in the prehearing.

2 MR. DETERDING: And, Commissioner, I will note for
3 your information that I believe the issues we have proposed do
4 not entail anything new that we are proposing. They are simply
5 stating our positions on issues underlying other issues that
6 are stated in the prehearing order, so I do not believe they
7 would entail any more discovery or anything else. I think they
8 are something that has been thoroughly examined through the
9 existing discovery.

10 However, I will note that the one issue that the
11 staff agreed to add for OPC with which I have some problem is a
12 wholly new issue that has not been discussed either in
13 testimony or to my knowledge brought up in any way during
14 discovery. So --

15 COMMISSIONER PALECKI: Well, why don't we address
16 these in the order that they appear in the draft prehearing
17 order.

18 MR. DETERDING: That's fine.

19 COMMISSIONER PALECKI: Mr. Jaeger, I note that there
20 are several other matters I have noted as preliminary matters.
21 Would you prefer that we address these as we go through the
22 prehearing order?

23 MR. JAEGER: I think we only have one preliminary
24 matter that is not in the prehearing order, and that is the
25 request of Van Hoofnagle, DEP's witness for staff to be taken

1 up on day certain, or at least in the first two days. He has a
2 problem with being there all three days and he would like to
3 either go Wednesday or Thursday, but not have to be around on
4 Friday if at all possible.

5 COMMISSIONER PALECKI: Is there any representative
6 from DEP here in the room today?

7 MR. JAEGER: We represent him. He is our witness. I
8 am counsel for Van Hoofnagle, and he requests that the
9 Commission take him up on either the first or second day.

10 COMMISSIONER PALECKI: Does any party have any
11 objection to Mr. Hoofnagle being taken up at a later time in
12 the hearing?

13 MR. BURGESS: No objection from Public Counsel.

14 MR. DETERDING: No objection.

15 COMMISSIONER PALECKI: All right. We will go ahead
16 and rule that Mr. Hoofnagle will be taken up on a day certain.
17 And, Mr. Jaeger, I will have you arrange exactly the time and
18 day that Mr. Hoofnagle will be taken up. And please make sure
19 you notify the other parties.

20 MR. JAEGER: Okay. Commissioner, here is the slight
21 problem we may have. Customer testimony in the last water rate
22 case we had took the whole first day. And it would make sense
23 to have -- Van Hoofnagle is on quality of service and the
24 actions of the interagency task force, and it would actually
25 make sense for him to go on the first day.

1 But if the customers -- we went past 11:00 o'clock at
2 night. So I think it would be good for him to be there to
3 listen to those witnesses, but if we don't get to him on the
4 first day, then he would just spend the night and testify on
5 the second day. So, what I would like to have is that it would
6 be okay for him to come in on the afternoon of the first day
7 and then if we get to him on the first day, fine; if not, the
8 second day. And that's what I would like to be the
9 stipulation, that he would drive down that morning and be there
10 early afternoon.

11 COMMISSIONER PALECKI: Do any of the parties have any
12 problems with that arrangement?

13 MR. DETERDING: No.

14 MR. BURGESS: No.

15 COMMISSIONER PALECKI: We will go ahead and include
16 that, then, as part of the prehearing order. All right. At
17 this time we will go ahead and address the draft prehearing
18 order. I think we better take it section-by-section just to
19 make sure that we cover everything. The first -- really the
20 first six sections are relatively preliminary. Why don't we
21 just go through Sections I through VI. Does anyone have any
22 corrections or changes they would like to see made to Sections
23 I through VI of the prehearing order.

24 MR. JAEGER: Commissioners, on Section II, Page 4,
25 first full paragraph, it says -- the last sentence, it says

1 Representative Fasano intervened after the due date for
2 prehearing statements, and then it has language after that.
3 What I would like to do is just strike all of that language and
4 has now adopted the positions of the OPC on all issues.

5 COMMISSIONER PALECKI: Representative Fasano, is that
6 satisfactory to you?

7 REPRESENTATIVE FASANO: Yes, it is. Thank you.

8 COMMISSIONER PALECKI: Thank you. We will amend the
9 draft prehearing order to make those changes. Any other
10 modifications to Sections I through VI of the draft prehearing
11 order? Hearing none, we will move on to Section VII of the
12 draft prehearing order. This is the order of witnesses and the
13 issues to be addressed by each witness.

14 MR. JAEGER: One preliminary on that. The issues
15 numbers, of course, if we delete any issues or add any we will
16 make the necessary adjustments as needed.

17 COMMISSIONER PALECKI: And, of course, we have
18 already addressed the order that Witness Van Hoofnagle will be
19 taken in.

20 MR. JAEGER: On either the afternoon of the first day
21 or the second day. And I may just put an asterisk by Van
22 Hoofnagle's name and put that in there.

23 COMMISSIONER PALECKI: Now, would parties rather take
24 up direct and rebuttal testimony at the same time for each
25 witness rather than calling them twice? That is very much my

1 preference because I believe it will move the hearing along
2 much more quickly, but I would be willing to hear from the
3 parties on that if there are any parties that feel it is
4 important that direct and rebuttal be separate.

5 MR. BURGESS: Commissioner, for the Public Counsel,
6 we don't have an objection to the witnesses testifying both at
7 the same time. It is a little bit of taking a shot in the dark
8 here since we haven't seen the rebuttal, but just judging by,
9 you know, normal process and procedure, I don't think it would
10 cause us any problems to go ahead and have them taken at the
11 same time.

12 COMMISSIONER PALECKI: Good. Mr. Deterding.

13 MR. DETERDING: Commissioner, we do. I believe that
14 it is important for the flow and understanding of the case and
15 the issues that rebuttal be taken separately after all direct.
16 And we would suggest that in every case. If not every case, in
17 almost every case that I have been involved in that the
18 Commission has taken the rebuttal as a separate matter after
19 the completion of all the direct testimony, and I would urge
20 you to do the same here.

21 COMMISSIONER PALECKI: Well, I'm relatively new with
22 the procedures in water and wastewater having only attended a
23 couple of water and wastewater hearings. But in other
24 industries, and especially in the electric and gas industries,
25 we almost always take up both direct and rebuttal together.

1 Mr. Jaeger, does staff have any advice they could
2 give me on this issue?

3 MR. JAEGER: Let me talk to my -- just one second,
4 sir.

5 MR. BURGESS: Commissioner, while he is doing that, I
6 might point out one advantage to the approach you're speaking
7 of is occasionally we will find an issue that has been raised
8 by our office in opposition to the company and then we read the
9 rebuttal testimony of the company and find that there is
10 justification for their position and, therefore, relent in that
11 particular position.

12 And if we are able to present the two testimonies at
13 the same time, it makes -- I would say it makes a better flow
14 for those particular issues. Whereas otherwise, holding it to
15 a technical application, we couldn't relent until after we hear
16 the rebuttal testimony of the company. And, therefore, it
17 takes away that useful tool to the Commission.

18 COMMISSIONER PALECKI: Well, we have three days for
19 this hearing, and it is going to be -- I'm sure we are going to
20 have many customers on the first day of the hearing that we
21 hear from, so we really have very restricted time.

22 Mr. Jaeger.

23 MR. JAEGER: We have seen it done both ways. And I
24 have actually seen very little confusion either way. I mean,
25 sometimes there is a little bit of problem, but we don't see

1 where either way would make that much difference in the flow.

2 COMMISSIONER PALECKI: Well, let me make this ruling,
3 then. I will rule that generally we will have both direct and
4 rebuttal testimony covered at the same time.

5 Mr. Deterding, if there is an exceptional
6 circumstance where you feel that it is absolutely necessary
7 that you have separate direct and rebuttal, I will allow that,
8 but I'm not going to allow it for all witnesses. You will have
9 to show me that it is necessary.

10 Let's go through the positions in Issues VIII and IX.
11 Basic positions, are they accurate for all parties?

12 MR. LAPP: Mark Lapp here. I haven't participated in
13 these before, do you want corrections of typos at this point?

14 COMMISSIONER PALECKI: Yes. We have a court reporter
15 here and she will go ahead and make all corrections, including
16 typos. So, yes, this is your opportunity to get it right.

17 MR. LAPP: (Inaudible reception over telephone) -- my
18 position, my Page Number 7, I'm not sure how it is for
19 everybody else. Sometimes E-mails print out differently. But
20 anyway, the second full paragraph that begins Aloha is located
21 in Pasco County. Are you with me?

22 COMMISSIONER PALECKI: We are on a different page
23 from you, but we will find it.

24 MR. JAEGER: I believe it's in the second full
25 paragraph on Page 9.

1 COMMISSIONER PALECKI: Okay. We are with you now,
2 Mr. Lapp.

3 MR. LAPP: It's the eighth line down where it says --
4 well, actually the sentence begins Aloha is also within an area
5 that is informally known, the word "as" needs to be inserted.
6 Is that clear?

7 COMMISSIONER PALECKI: All right. We have that.

8 MR. LAPP: And then down in that same paragraph, the
9 sixth line from the bottom where it is giving the acronym
10 Northern Tampa Bay WUCA, it's got a typo there. It should be
11 NTB. Do you have that?

12 COMMISSIONER PALECKI: Could you repeat that one more
13 time, I think I do, but just to make sure I have it right.

14 MR. LAPP: The sixth line from the bottom of that
15 same paragraph, the acronym NTsWUCA is given and the S should
16 be changed to B.

17 MR. JAEGER: Okay. That NT little s, the little s
18 should be changed to a capital B, is that right, Mark?

19 MR. LAPP: That's right.

20 COMMISSIONER PALECKI: We are having just a slight
21 problem with the phone that you're on. It seems to be cutting
22 out and then cutting can back on, but I think we have that
23 correction.

24 Any others, Mr. Lapp?

25 MR. LAPP: Not -- boy, this phone is awful. How

1 about I call back in?

2 COMMISSIONER PALECKI: All right. Well, we have
3 those changes. And what we'll do is we will move on to the
4 other parties, any corrections they have, and we will take
5 yours up last. Do any other parties have any changes to their
6 statement of basic position? Let's move on to issues position.
7 Any changes on Issue 1? And, Mr. Jaeger, as we go through
8 these issues, is this one we want to address any of the
9 additional issues, as well?

10 MR. JAEGER: I think 20 and 21, when we get to 20
11 that's where they wanted to break them out, and 21 is also
12 where they wanted to add two more issues, and then 27 is the
13 other place. So when we just go through the issues they will
14 automatically appear and I think we can take them up at that
15 time.

16 COMMISSIONER PALECKI: All right. Let's go through
17 Issues 1 and 2. Any changes there? Hearing none, we will
18 leave the draft prehearing in the same shape it's in now.
19 Issue 9-3. No changes. Issue 12-4. 13-5. 18-7.

20 MR. JAEGER: There is a 14-6 at the very bottom of
21 Page 13.

22 COMMISSIONER PALECKI: I'm sorry, I missed that one.
23 Any changes to Issue 14-6? 18-7. 20-8.

24 MR. JAEGER: Okay. This is the one where Mr.
25 Deterding wanted to add an Issue 20B and a 20C, and we thought

1 at the pre-pre that -- we decided just to keep the issue as is,
2 and with the stipulation for the ERCs.

3 MR. DETERDING: Yes. I believe the Issue 20C is the
4 20-8, so that one I can understand the staff believing that is
5 subsumed.

6 My concern is with 20B, which is an issue that we
7 propose in order to highlight the importance of the figure for
8 the gallons per day per ERC for the projections of gallons
9 during the projected test year.

10 Briefly, the reason why we believe this is an
11 appropriate separate issue is that while the staff's analysis
12 and proposal on that issue is based on a gallonage trend, for
13 lack of a better term, ours is both an historic gallonage
14 figure and a projection based upon that historic figure plus
15 gallons per day per ERC experienced.

16 I believe Public Counsel's position on this issue of
17 total gallons to be considered in the test year is also based,
18 at least in part, on a projection based on a gallons per day
19 per ERC. So leaving this issue out as a separate one kind of
20 ignores -- or failure to include this as a separate issue
21 ignores the basis that the Utility and the Public Counsel have
22 utilized in establishing the test year gallons. And I believe
23 it is an appropriate additional and separate issue for that
24 reason.

25 COMMISSIONER PALECKI: Public Counsel.

1 MR. BURGESS: We don't object to the approach of just
2 allowing it to be subsumed within the position. We found that
3 we were able to put our position in response to the issue as
4 stated by staff. And it's not something that we feel like we
5 need in order to have the Commission understand the issues that
6 we think are ripe for a decision.

7 COMMISSIONER PALECKI: Staff.

8 MR. JAEGER: Clearly, we think it is -- what he is
9 arguing is a methodology of how you get to this gallonage
10 figure and that can just be in a position. And so we think
11 it's not needed.

12 COMMISSIONER PALECKI: Staff, let me ask you a
13 question. With regard to the testimony and the consideration
14 of this subject matter, will the issue as stated still allow
15 the matter that has been raised by Counsel Deterding to be
16 fully explored and resolved?

17 MR. JAEGER: I think it is already in the testimony
18 and fully explored and resolved and can be handled through this
19 issue.

20 COMMISSIONER PALECKI: I will rule that we will not
21 include the additional issue. But, Mr. Deterding, I will let
22 you know that we will not restrict Aloha in any way from
23 exploring this issue, from briefing the matter. The subject
24 matter is subsumed within this issue, so we will not restrict
25 you in any way from addressing the subject matter.

1 MR. DETERDING: Okay. Thank you, Commissioner. I
2 will check with my client, but I believe the position that we
3 have stated there would take care of our stating our position
4 with regard to that separate issue within this one, but let me
5 make sure before I say that is our final position under the
6 ruling.

7 COMMISSIONER PALECKI: Thank you.

8 All right. Let's see. The next issue is 21-9. Do
9 the parties have any changes or corrections to 21-9?

10 MR. JAEGER: Again, this is where Mr. Deterding wants
11 to add two issues, 21B and 21C, I believe it is.

12 MR. DETERDING: Correct.

13 COMMISSIONER PALECKI: I will hear from the parties.
14 Mr. Deterding.

15 MR. DETERDING: Yes. These are issues that we wanted
16 to add because we believe they are very important
17 considerations in establishing rates on a going-forward basis
18 and the resulting possibilities of shortfall because of the
19 peculiar circumstances of this case. We believe they are very
20 important to highlight because they raise issues that are not
21 normally occurring in a rate case, including those cases where
22 there are projections and the adjustments to test year flows
23 based upon regression that this case includes. For several
24 reasons it is rather unique in the impact of that regression
25 and reduced consumption.

1 And we felt that these two separate issues about that
2 unique circumstances needed to be highlighted. I noticed that
3 the staff is including them, so I assume that given that that
4 there is at least some agreement that we have a reasonable
5 issue to raise. I don't know. I will not speak for the staff,
6 of course.

7 COMMISSIONER PALECKI: Public Counsel.

8 MR. BURGESS: Commissioner, we agree with Mr.
9 Deterding that there are some unique aspects of this case, and
10 we also have some concerns about what should be done in trying
11 to deal with these. And our concern, of course, is assuring
12 that the customers aren't overcharged in subsequent periods.
13 But we found that we were able to address this issue or our
14 concerns. Rather than in a separate issue, we have addressed
15 them in the final issue of the prehearing order or draft
16 prehearing order which asks whether the docket should be closed
17 or left open. And that's where we found it to be appropriate
18 and acceptable to put our position as to any continuing
19 jurisdiction that we thought the Commission should retain. So,
20 you know, we can take a position here if you want them separate
21 issues, but we found it to be acceptable simply to put our
22 position in response to the last issue.

23 COMMISSIONER PALECKI: Just so I'm sure that I
24 understand, the last issue is whether the docket should be kept
25 open.

1 MR. BURGESS: Correct.

2 COMMISSIONER PALECKI: And is your position that you
3 believe that the docket should be kept open so that the
4 Commission can monitor or -- explain your position and maybe I
5 will understand this a little better.

6 MR. BURGESS: The position is that this is a really
7 tricky issue, and that what we have is a situation where there
8 is an enormous difference between the gallonage cost depending
9 on the source of where the gallons are pumped from. And we
10 have -- everybody has agreed that a starting point for
11 determining how much -- how many gallons the utility must
12 purchase from Pasco County is to start with the water use
13 permits. The problem that we have is historically the company
14 has pumped out more than its water use permits would allow, and
15 that is a decision that is in the unilateral control of the
16 company.

17 So our concern is if revenue requirements are
18 established on the assumption that the company will need a
19 certain amount of gallons from the county at the very expensive
20 rate and then the company by virtue of a decision it can make
21 within its unilateral control decides to pump more out of its
22 water use permits so that it needs less gallons, then it
23 automatically is in an overearnings situation. It is our
24 belief that the Commission needs to retain some sort of limited
25 jurisdiction for the examination or continued, I guess,

1 monitoring is a good way to put it of that very limited issue.

2 So that is kind of a long way of saying that, yes, we
3 do agree with some type of monitoring process, but only on a
4 very limited basis. We don't want to run afoul of the tried
5 and true regulatory process of establishing rates that give a
6 utility the opportunity to earn a reasonable return, and we
7 don't want to get -- to broaden it to the point of where we
8 basically set up an assurance that they achieve a particular
9 level of return.

10 COMMISSIONER PALECKI: Thank you. Staff.

11 MR. JAEGER: We put this issue in because we didn't
12 know if it was subsumed. First of all, we do not think it is
13 needed. Staff does not think it is needed. You know, what is
14 the appropriate rate structure, whether the docket should be
15 open, we think it can all be addressed in that. Second of all,
16 the issue as worded, I believe, is not a neutral issue and it's
17 also very hard to read. And I'm not sure if it could be
18 changed to where it would be acceptable to staff. But when we
19 look at the issue the way it is phrased at this time, and I'm
20 talking about 21B, it is very hard to understand.

21 MR. DETERDING: Well, we can certainly reword it if
22 there is some concern with the wording -- I assume you are
23 talking about 21B --

24 MR. JAEGER: Yes.

25 MR. DETERDING: -- to make it simpler. But I do

1 believe that these are important issues. While Mr. Burgess
2 makes the point -- and, again, I think we are addressing here
3 both 21B and C and Mr. Burgess' proposed issue, at least that's
4 what I think he was addressing.

5 MR. JAEGER: I think we're talking about his position
6 on the closing the docket issue, he put it in --

7 MR. DETERDING: You're correct; you're correct.

8 COMMISSIONER PALECKI: I don't think I need any
9 further argument on this. I'm going to ask that staff and the
10 parties get together to try to reword the objectionable portion
11 of the issue, but I believe that just whether the docket should
12 be closed is not adequate to put all parties on notice of this
13 issue. I think it does give rise to the status of a separate
14 issue, and I'm going to allow the two separate issues,
15 21B and C. That entails giving the parties additional time to
16 give their positions. Staff, do you have a period of time you
17 believe would be reasonable?

18 MR. JAEGER: Well, I think we are trying to get the
19 order out no later than like January 2nd, and so what I would
20 like is something by December 31st. And I will be working on
21 New Year's Eve at a deposition, I think. But if I could have
22 something by December 31st on both the issue and the
23 position -- well, we can try to get the positions worked out
24 the next day and then have the -- I mean, the issue worked out
25 the next day or so and then have the positions by December

1 31st.

2 MR. DETERDING: And I think we can reword 21A -- B,
3 sorry -- so that it encompasses the issue that Mr. Burgess is
4 talking about, as well.

5 COMMISSIONER PALECKI: Well, if we could do that we
6 would be that much further ahead. And if we can do that, I
7 would appreciate it. But I do want these to be worded in a
8 neutral manner, and I agree with staff for the Commission, or
9 the Commission staff that this needs to be reworded. It is not
10 a neutral issue as it is stated. Mr. Lapp, are you back on the
11 phone?

12 MR. LAPP: Yes, I'm here.

13 COMMISSIONER PALECKI: We are now up to --

14 MR. LAPP: I have been with you all along.

15 COMMISSIONER PALECKI: Oh, you have? Okay. So you
16 have not had any additional -- any changes to any of the
17 further issues?

18 MR. LAPP: No. I would just concur, 21 is confusing
19 and needs to be rewritten.

20 COMMISSIONER PALECKI: Good. The next issue is
21 22-10. Are there any changes, additions, or corrections on
22 Issue 22-10? Issue 23-11. Issue 27-12. Is Issue 27A one of
23 the additional issues?

24 MR. DETERDING: Yes, Commissioner. This is the final
25 additional issue that we had proposed. It is under 27 because

1 it is an application of the percentage -- pension and benefits
2 percentage that is determined in 27. And we believe that it is
3 a separate issue of how that percentage is applied and to what
4 it is applied.

5 And I believe that there -- I'm not sure whether
6 there is disagreement on that, but I believe there is
7 disagreement on to what that percentage should be applied. So
8 that 27 deals with the pension and benefit percentage
9 calculation, or at least that's the way I think we have all
10 viewed it. And I think 27A deals with the application of that
11 percentage.

12 COMMISSIONER PALECKI: Public Counsel.

13 MR. BURGESS: I tend to -- I mean, I tend to -- I'm
14 neutral on whether we need two separate issues or can put them
15 as a position in response to one. I agree with Mr.
16 Deterding's -- generally with Mr. Deterding's assessment as to
17 where the controversy is between the parties.

18 COMMISSIONER PALECKI: Staff.

19 MR. JAEGER: It appears to me that you could keep
20 Issue 27-12, and that the position would be, yes, you can make
21 that adjustment, but you also have to take -- since we are
22 admitting this additional liability obligation, you have to do
23 another adjustment. It's a fallout of 27 is, I guess, what
24 we're saying, 27-12. 27A is just a fallout of 27-12.

25 MR. DETERDING: And I apologize for speaking again,

1 but I think the wording of 27 is narrow enough to where it does
2 not encompass what is proposed in 27A. Perhaps if we broaden
3 the wording of 27-12, we can subsume within a position of the
4 parties the application that I'm talking about in 27A.

5 COMMISSIONER PALECKI: Do you have a suggestion as to
6 how 27-12 could be broadened?

7 MR. DETERDING: Again, maybe just an addition of a
8 phrase there that says and how should the resulting pension and
9 benefits percentage -- to what should the pension and benefit
10 percentage be applied.

11 MR. JAEGER: Ms. Wood suggested what adjustments
12 should be made to pension expense.

13 MR. DETERDING: And that's fine. That would be even
14 broader.

15 COMMISSIONER PALECKI: We will go ahead and modify
16 Issue 27-12, and we will have -- proposed Issue 27A will be
17 subsumed into the modified 27-12. And, once again, Mr.
18 Deterding, I assure you that we will allow you to address the
19 subject matter in the issue. They are subsumed within the
20 broader issue and we will not restrict you from addressing the
21 matter.

22 MR. DETERDING: And, Commissioner, in light of that
23 ruling, I will modify our position on that issue to the extent
24 it needs to be.

25 COMMISSIONER PALECKI: Thank you. Issue 28-13.

1 Issue 29-14. Issue 31-15. Issue 32-16.

2 MR. LAPP: It is SWFWMD's position there is a
3 misspelling the third line from the bottom, or fourth line --
4 (Inaudible.)

5 COMMISSIONER PALECKI: Say that one more time, Mr.
6 Lapp. Your phone kind of clips off the end of your words.

7 MR. LAPP: Okay. The statement of SWFWMD's position,
8 the fourth line from the bottom, purview is misspelled.

9 COMMISSIONER PALECKI: Okay. We have that. Purview
10 is actually P-U-R, is that correct?

11 MR. LAPP: Right.

12 COMMISSIONER PALECKI: Thank you for that correction.

13 MR. JAEGER: Okay.

14 MR. LAPP: That's all.

15 COMMISSIONER PALECKI: All right. Issue 33-17.

16 Issue 34-18. Issue 35-19. Issue 36-20. Issue 37-21. Issue
17 39, which is a new issue. Do all parties agree that this is
18 appropriate?

19 MR. JAEGER: 38-22 was at the bottom of 26.

20 COMMISSIONER PALECKI: I'm sorry, I skipped one.
21 Issue 38-22, any changes or corrections? Issue 39.

22 MR. BURGESS: Commissioner, we offered this issue,
23 and if you will indulge me to address that. My understanding
24 is that Commission precedent is that customers may address any
25 issue that they deem relevant. If that is so -- without

1 restriction, or that the Commission deems relevant. If that is
2 so, then I don't need this. It was something that I wanted to
3 find out from the customers as to what their reaction is to
4 these newsletters. I asked -- in discovery I asked a number of
5 questions about them, about the expense and who bears the
6 expense of these newsletters to the company personnel. We did
7 not separate it out as an issue in our own testimony, but I
8 wanted to -- because we felt like the relevant information
9 would come from the customers. And so I was intending to find
10 out from the customers some impressions of it.

11 I thought perhaps it was an obligation to provide the
12 parties in the case notice that it may be an issue. If there
13 is an assurance that customers are entitled to address issues
14 that the Commission deems to be relevant at the hearing, I
15 don't need this separated out as an issue.

16 COMMISSIONER PALECKI: Well, I believe we can give
17 you that assurance, but I would like to hear from staff and Mr.
18 Deterding before I do make a ruling.

19 MR. DETERDING: Commissioner, my only real concern, I
20 think if we follow the standard procedure whereby the utility
21 is given the opportunity through a late-filed exhibit to
22 respond to customer concerns, then I think certainly the
23 customers are going to be able to speak to this issue at
24 hearing. And as long as we are given an opportunity to
25 respond, I think it will work fine that way. My only concern

1 is that there are issues, many more issues than just the points
2 raised, that the customers may raise as to whether or not they
3 believe this is appropriate. For instance, these newsletters
4 for the most part have been utilized to relay conservation
5 issues and updating customers on the status of issues like
6 corrosion control, which I think at least as to the
7 conservation issues are something that if we are not required
8 to do it has certainly been recommended that we do both by the
9 water management district and by the Commission's own
10 management audit, that we do communications with our customers
11 on a regular basis.

12 But as to the treatment of the issue, I believe Mr.
13 Burgess is right, as long as the Utility is given that
14 opportunity that it normally is to respond to those concerns,
15 that we can do so through our late-filed exhibit.

16 COMMISSIONER PALECKI: Thank you.

17 Staff.

18 MR. JAEGER: Commissioner, the staff notes that we
19 have recognized that sometimes customers put out an issue that
20 was not recognized by all the parties and then we have added it
21 as a new issue. The other part, it's hard to make an
22 adjustment unless you have it as an issue, but we couldn't add
23 it as a new issue if it is raised by the customers. So, we
24 think it is -- you know, if he is relying on the customers to
25 raise that issue, then we could add it as a new issue later.

1 COMMISSIONER PALECKI: Well, I think I have heard
2 from staff -- or, excuse me, from the Office of Public Counsel
3 that they don't need the issue as long as they have the
4 assurance that it can be raised by the customers. And Mr.
5 Deterding has agreed that it is an issue that can be raised by
6 the customers. So I'm going to rule that this issue will not
7 be included as a specific issue, but it is an issue that may be
8 addressed at the hearing.

9 And I know these can be very complicated issues.
10 Generally, items regarding safety, conservation have been
11 allowed in rates, but there is also a first amendment issue
12 regarding a utility's right to make other statements that have
13 nothing to do with safety, conservation, et cetera. And
14 generally those portions of the newsletter, I believe, would be
15 paid for by the stockholders of the company. So this could
16 turn out to be a complicated issue. But for now we will
17 eliminate it as a specific issue and allow the parties an
18 opportunity to -- and including the customers an opportunity to
19 address this.

20 Issue 39-24.

21 MR. BURGESS: Commissioner, I would ask leave for OPC
22 to be allowed to amend its position to this, given that the
23 substance of our position here is going to be addressed instead
24 to the new Issue 21, and then this would be amended
25 accordingly.

1 COMMISSIONER PALECKI: Yes. We will give you that
2 opportunity, all parties the opportunity to amend their
3 position on this issue based upon the allowance of the two
4 additional new issues. Also, because I understand that these
5 issues are interrelated, we will not -- we will allow the
6 parties to at least explain in Issue 39-24 the reason for their
7 positions. By allowing you to amend this, I'm not necessarily
8 restricting you from just putting in a yes or a no position
9 here.

10 MR. BURGESS: Thank you.

11 COMMISSIONER PALECKI: Exhibits. Are there any
12 corrections on the exhibit list? And why don't we start off
13 with Office of Public Counsel. Do you have any changes or
14 additions? Actually since Aloha is first, why don't we start
15 off with Aloha.

16 MR. DETERDING: I don't know of any, Commissioner.

17 MR. JAEGER: Marty, on the second line where it is
18 David Porter and Robert C. Nixon, jointly, I left in Schedules
19 F1 through F10 of Aloha's application. I think in your change
20 you just said Exhibits 3 and 5.

21 MR. DETERDING: Correct. You are correct.

22 MR. JAEGER: Do you need the schedules to be deleted
23 or not deleted?

24 MR. DETERDING: You are correct, I think those should
25 be in there.

1 MR. JAEGER: Okay.

2 COMMISSIONER PALECKI: Now, Mr. Deterding, I have
3 already ruled that generally I'm going to have the direct and
4 rebuttal testimony together, but if you can show that there is
5 a good reason that you want or need them to be separated for a
6 specific witness that we will address that at the hearing and
7 we will allow you to make that argument. But I believe that
8 since we have gone ahead and made at least a preliminary ruling
9 that generally direct and rebuttal will be together, I'm going
10 to ask Mr. Jaeger on the prehearing order to put direct and
11 rebuttal together in the prehearing order.

12 So that for purposes of both the initial witness list
13 and the exhibit list that we are going to consolidate those so
14 they will be in the order that we expect to address them at the
15 hearing, which our expectation is that the direct and rebuttal
16 will be considered together.

17 Stipulations. Wait, I forgot. Office of Public
18 Counsel, any changes as far as the exhibit list is concerned?

19 MR. BURGESS: Commissioner, this looks accurate. We
20 don't see any changes we would make.

21 COMMISSIONER PALECKI: Staff, any modifications or
22 changes to exhibits?

23 MR. JAEGER: My co-counsel just noted that we have
24 revised Frances J. Lingo's exhibits, but they were revised
25 sometime ago and they were still FJL-8, 9, 10, and 11, it is

1 just as revised. So I don't know if we need to put that in
2 there or not.

3 COMMISSIONER PALECKI: It is also my understanding
4 that those exhibits will be adopted by Mr. Stallcup. Will you
5 change the name of the exhibit, or will you leave them under
6 Ms. Lingo?

7 MR. JAEGER: We were going to leave the initials the
8 same, FJL, but Paul Stallcup will be listed as the witness that
9 is sponsoring those.

10 COMMISSIONER PALECKI: Fine. Any other modifications
11 to exhibits? Let's move on to proposed stipulations. Staff, I
12 believe we had at least one matter related to stipulations that
13 I had under preliminary matters.

14 MR. JAEGER: Okay. One of the stipulations is that
15 Staff Witness Vincent C. Aldridge, the staff auditor, may be
16 stipulated, all of his testimony and exhibits be stipulated in
17 and he be excused from the hearing. And I thought all the
18 parties agreed that he need not attend the hearing.

19 COMMISSIONER PALECKI: Is that accurate?

20 MR. BURGESS: Correct.

21 COMMISSIONER PALECKI: Hearing no objection from the
22 parties, Staff Witness Vincent C. Aldridge, his testimony will
23 be stipulated. It will be entered into the record as
24 stipulated and Witness Aldridge will be excused from the
25 hearing.

1 MR. JAEGER: And he did have one exhibit attached to
2 it, and that would be admitted, also.

3 COMMISSIONER PALECKI: And I will ask staff counsel
4 to make sure at the hearing that that is brought up to the
5 Chairman and that that is introduced as an exhibit at the
6 hearing.

7 MR. JAEGER: Yes, Commissioner. Also, I think Ms.
8 Lytle before she left indicated that she would like not to have
9 her witnesses be there all three days, and I think it's going
10 to be very hard to figure out if they are going to be on the
11 second or third day, but I think they should be excused, they
12 should not be required to attend on the first day. We will
13 have plenty of other witnesses, plenty of customers, I believe,
14 and the first day it would probably be unnecessary for them to
15 be there.

16 COMMISSIONER PALECKI: I agree. But let's hear from
17 the parties. Any objection?

18 MR. BURGESS: No objection.

19 MR. DETERDING: None.

20 COMMISSIONER PALECKI: Hearing no objection from the
21 parties, we will excuse those witnesses for the first day of
22 the hearing.

23 Anything further, Mr. Jaeger?

24 MR. JAEGER: Let me make sure. Okay. 18 is the one
25 where we thought we had a stipulation, and it says the correct

1 annualized salary of the utility operations supervisor salary
2 expense should be reduced by \$21,268. And what we were trying
3 to do, they had put in all of the salary of a Mr. Painter, I
4 believe it was, for the 34,029.

5 And when you allocate the typical allocation to the
6 Seven Springs, then that would mean that only \$13,000 of his
7 salary would have been allocated. And so that was what the
8 stipulation was based on, the \$21,268.

9 Staff, in reviewing the 991643 docket, determined
10 that all of his salary had been allocated to the wastewater
11 side, every bit of it, 100 percent in the last rate case. And,
12 therefore, the wastewater rates are designed for him to recover
13 the complete salary of Mr. Painter in the wastewater rates. So
14 we think that none of the \$34,000 salary for Mr. Painter should
15 be in this proceeding for Seven Springs Water.

16 And we haven't had a chance to talk with Marty,
17 because everything was happening there at the end, and we don't
18 know if this stipulation is now going to be thrown out or if
19 you have to look at it or make this an issue.

20 MR. DETERDING: I will have to discuss it with our
21 accountant and with my client. If, in fact, the facts are as
22 stated by the staff, and we did talk briefly about this before
23 the prehearing, and if there are no other extenuating
24 circumstances, we may still have a stipulation. But, again, I
25 will have to check on this. I just found out about this last

1 evening.

2 COMMISSIONER PALECKI: How soon do you believe you
3 could you get back?

4 MR. DETERDING: I should be able to give an answer to
5 that by tomorrow.

6 COMMISSIONER PALECKI: All right. Well, staff, would
7 the best way to handle this be to leave it as a stipulated
8 issue for now with the understanding of the parties that if you
9 are unable to reach an agreement with the company that it will
10 be reinserted in the prehearing order and it will be an issue
11 for the hearing?

12 MR. JAEGER: I think that is correct.

13 COMMISSIONER PALECKI: And I don't want to put Aloha
14 in a position that they can't comply with -- you said you think
15 they can get back by tomorrow by 5:00. Would it be
16 satisfactory if Monday by the close of business, that that
17 would be the requirement that you get back to staff. But if
18 you can by tomorrow, we would appreciate it.

19 MR. DETERDING: Yes. That would be good,
20 Commissioner, because of the other deadlines that we have
21 coming up this week.

22 COMMISSIONER PALECKI: Is anyone in staff going to be
23 here on Monday? I want to make sure there will be somebody.

24 MR. JAEGER: I will be here Monday.

25 COMMISSIONER PALECKI: Good. Mr. Jaeger will be

1 here. So you can contact him on Monday, if you need to. But
2 hopefully we will hear from you tomorrow.

3 MR. DETERDING: Thank you, Commissioner.

4 COMMISSIONER PALECKI: Staff, any other further
5 stipulation issues?

6 MR. JAEGER: I think the rest of the stipulations are
7 as agreed to by you and the -- I mean, the rulings and the
8 stipulations I think have all been agreed to as stated now.

9 COMMISSIONER PALECKI: And when will the parties be
10 getting together on the rewording of the one issue that we --

11 MR. JAEGER: That's what I was just going to ask.
12 Mr. Willis thought maybe if we take five minutes right now we
13 might be able to get 21B and 21C, the issues thrashed out if we
14 could just take a five-minute break.

15 COMMISSIONER PALECKI: Why don't we take a
16 five-minute break and reconvene, and that way we will be able
17 to have the final version of these issues in the prehearing
18 order.

19 Mr. Lapp and Representative Fasano?

20 REPRESENTATIVE FASANO: Pardon me, sir?

21 COMMISSIONER PALECKI: We are going to take a very
22 brief break --

23 REPRESENTATIVE FASANO: Okay.

24 COMMISSIONER PALECKI: -- and allow the parties to
25 try to hash out some more impartial wording for these issues.

1 REPRESENTATIVE FASANO: Okay, sir.

2 COMMISSIONER PALECKI: And if you want to stay on the
3 line, I think that would be probably the best way to handle
4 this so that you don't have to call back in. And I'm going to
5 keep this as a strict five minutes. Right now my watch shows
6 exactly 10:30, and so we will do five minutes from now. The
7 clock in the hearing room actually shows 10:32, so we will
8 allow until 10:37 by the clock in the hearing room, and
9 hopefully we will be able to have some language that will
10 resolve the wording of these issues.

11 REPRESENTATIVE FASANO: That sounds great. Thank
12 you.

13 COMMISSIONER PALECKI: We will get back in five
14 minutes.

15 (Brief recess.)

16 COMMISSIONER PALECKI: We will call the prehearing
17 back to order. That was a very fast two or three minutes, and
18 I appreciate the efforts of all of the parties in working
19 through the wording of those issues.

20 Mr. Jaeger, do you have a final wording that has been
21 agreed upon?

22 MR. JAEGER: Yes, Commissioner. For Issue 21B, the
23 issue should read, "Should a provision be made to monitor
24 whether the gallons pumped from Aloha's well --" that is the
25 gallons pumps from Aloha's wells -- "differs from the maximum

1 amount permitted under the WUP, the water use permit." And
2 then from 21C --

3 MR. DETERDING: Could you repeat that again.

4 MR. JAEGER: "Should a provision be made to monitor
5 whether the gallons pumped from Aloha's wells differs from the
6 maximum amount permitted under the WUP?"

7 MR. LAPP: This is Mark Lapp. I have a slight change
8 that I think needs to be made to that. Most of our permits
9 include an annual average quantity and then also a peak monthly
10 quantity, so the term maximum quantity allowed under the WUP is
11 ambiguous. So I would just say, "In accordance with the
12 allowable quantities under the WUP."

13 COMMISSIONER PALECKI: Does anyone have an objection
14 to that modification, "In accordance with the allowable
15 quantities under the WUP"?

16 MR. DETERDING: Well, I believe that the whole rate
17 setting is based upon the maximum. And I believe it is the
18 annual average figure that we are dealing with. So perhaps in
19 order to clarify for the water management district folks, we
20 could change that to the allowable maximum quantities on an
21 annual average basis, or something like that, if that would
22 satisfactory his concerns. It's just that rate setting is
23 being based upon that maximum annual figure.

24 COMMISSIONER PALECKI: Mr. Lapp, would that
25 satisfactory your concerns?

1 MR. LAPP: I just don't like the term maximum,
2 because, you know, maximum -- there is another quantity in the
3 permit. What about saying, "The allowable annual average
4 quantity under the WUP," or "The permitted annual average
5 quantity under the WUP."

6 MR. DETERDING: Well, I believe that everything that
7 the staff, the OPC, and the utility have been working on as far
8 as rate setting bases that on what I understand is the maximum
9 allowable under the WUP. And, therefore, I believe the term
10 maximum is necessary in order to clarify this issue.

11 MR. LAPP: I don't have the permit in front of me, so
12 I don't know if -- there is another quantity that some permits
13 have called max day, maximum daily quantity, and I don't know
14 that this one has one or not. But I just don't want to create
15 confusion about that. Why can't you just say the permitted
16 quantity of the permit for an annual average basis. Or that
17 wasn't stated real well, but that is the gist.

18 COMMISSIONER PALECKI: Mr. Deterding?

19 MR. DETERDING: Again, I don't know that I can add
20 anything other than, again, to say that everything in rate
21 setting has been based upon an assumption of utilizing the
22 maximum permitted on an annual average basis. Now maybe, as I
23 said, the clarification of saying the maximum annual average.
24 Certainly it would not be -- as he notes, there are limits
25 related to daily, and I believe even monthly within the permit

1 of this utility. And we are not proposing to identify those.
2 So I believe some clarification may be in order that we are
3 talking about annual average per the permit, but I believe the
4 maximum number needs to be in there because that is what we
5 have used in rate setting here.

6 COMMISSIONER PALECKI: And I think the problem is
7 that we are really all talking about the same thing. And I
8 think Mr. Lapp has more precise terms of art that he uses
9 because he is dealing with this on a daily basis in his
10 capacity. But, Mr. Lapp, what about using the term maximum
11 permitted on an annual average basis?

12 MR. LAPP: The quantity on an annual average daily
13 basis. Yes, that's fine. I added a word or two, I think, but
14 maximum permitted quantity on an average annual daily basis.

15 COMMISSIONER PALECKI: You added the word daily. Is
16 that satisfactory to you, Mr. Deterding?

17 MR. DETERDING: I don't believe that is what we have
18 used here. I believe we have used the 12-month rolling
19 average. I mean, I can stretch out the term to make it fit
20 what the water management district uses in the permit, but the
21 point is I don't think we have used the daily max in anything,
22 we have used the annual max.

23 MR. LAPP: (Inaudible) -- average quantity for the
24 permit, which I think for this permit is 2,040,000 gallons per
25 day. It's a gallons per day quantity. I mean, it is averaged

1 out and then you come up with a bottom line figure of a
2 particular quantity that is pumped on any day (inaudible). You
3 don't get a (inaudible) month or year, you get a quantity for
4 the day that is averaged out over the course of the year.

5 MR. DETERDING: So you're saying that the two -- the
6 term I'm using is the same as the one you are, only yours is
7 stated in terms of days, and you believe that that is the way
8 the permit reads?

9 MR. LAPP: Yes.

10 MR. DETERDING: Well, if we are going to change it to
11 that language, I would have to consult with my people, because
12 I have nothing to do with their permit, to verify that they
13 agree that that is accurate.

14 MR. LAPP: Why don't you read it back without the
15 word daily in there.

16 COMMISSIONER PALECKI: Well, I'm going to have
17 Attorney Jaeger propose some language right now, and I want the
18 parties to listen carefully and let me know if this satisfies
19 your concerns.

20 MR. JAEGER: Okay. Should a provision be made to
21 monitor whether the gallons pumped from Aloha's wells differs
22 from the maximum permitted quantity on an annual average -- and
23 this is where we didn't know if we needed daily basis under the
24 WUP or without daily. And so I wasn't sure where we were
25 going. The annual average basis under the WUP. I think we can

1 get to it from the annual average basis, but --

2 COMMISSIONER PALECKI: I'm going to make a ruling
3 that the issue itself will be worded on an annual average
4 basis. However, Mr. Lapp, with the understanding, and you have
5 pointed out to us that there is a two million plus per day
6 average that is part of this permit. And we will permit you
7 and the parties, if there is some daily component of this that
8 needs to be addressed, we will permit you to address that. So
9 I don't want by the wording of the issue to restrict any party
10 from addressing any type of daily permit amount that is a part
11 of this issue. So I don't want the wording of the issue to be
12 viewed as restrictive.

13 MR. LAPP: That's fine, and I will accept this. If
14 you read through it again, the word differs -- I think the word
15 differs is in there (inaudible). It's rare that anyone ever
16 pumps their exact quantity, so that is odd to put differs from
17 the permitted quantity. Exceeds or is below.

18 MR. JAEGER: I think we wanted the issue with differ,
19 whether it is below or above. I think that was something that
20 was agreed to by OPC, the utility, and us. So I think that we
21 want, "Should a provision be made to monitor whether the
22 gallons pumped from Aloha's wells differs from the maximum
23 permitted quantity on an annual average basis under the WUP,"
24 that is the issue as we see it.

25 COMMISSIONER PALECKI: Okay. And we are going to go

1 ahead and that will be the language of the issue. And as I
2 have stated earlier, we are not going to be restrictive in our
3 interpretation of that issue if there are daily amounts that
4 need to be considered.

5 MR. LAPP: May I just say -- and just for the record,
6 I don't want to argue with you, and I will move right on, but
7 my concern goes beyond just the daily issue. Now having heard
8 it, I just think it is not appropriately worded. I mean, there
9 is hardly anyone that would ever pump their exact permitted
10 quantity, so it is oddly worded. It needs to say above or
11 below, and I don't know which way you are headed. So anyway, I
12 will just move on and state that I can't really concur with the
13 way that is worded.

14 COMMISSIONER PALECKI: Well, I think it is
15 anticipated that no one is ever going to hit the exact
16 gallonage on the head. I think more isn't the issue, and
17 correct me if I'm wrong, Staff, on conducting a monitoring so
18 that we know both overages and underages, underpumping.

19 MR. JAEGER: That's my understanding, Commissioner.

20 COMMISSIONER PALECKI: Mr. Lapp, for the record, we
21 have addressed your concern. I really think that we are -- I
22 think that what we're doing, though, will not --

23 MR. JAEGER: Ms. Merchant keeps telling me that this
24 is purely a ratemaking issue, and it's really -- you know, we
25 understand that SWFWMD is the controller of the WUP and the

1 permitting, but I think this is just trying to figure out what
2 we do with the rates. And so I don't think we are stepping on
3 SWFWMD's toes in any way.

4 COMMISSIONER PALECKI: And, Mr. Lapp, we have noted
5 your concerns. We will move on to the second issue.

6 MR. JAEGER: Okay. Again, this was just to more
7 neutralize the issue. And it says, "What provision should the
8 Commission make within ratesetting for the potential shortfall
9 or excess if usage by customers differs from that included in
10 ratesetting." So, basically, we added, "or excess," crossed
11 out "is greater than," and said, "differs from," and then just
12 said, "in rate setting."

13 COMMISSIONER PALECKI: And is that issue satisfactory
14 to the parties?

15 MR. BURGESS: Well, just for the record, we agree
16 with staff's original position that that is not an appropriate
17 issue, that that is something that goes counter to ratemaking
18 philosophy. But, given your ruling, and we agree that that is
19 a neutrally stated issue upon which we can take a position.

20 COMMISSIONER PALECKI: Thank you. And I believe that
21 there was discussion earlier that at least one of these two
22 issues would also encompass the issue that the Office of Public
23 Counsel was seeking. And has that been accomplished?

24 MR. BURGESS: It has been.

25 COMMISSIONER PALECKI: Thank you. Staff, what would

1 be a reasonable time period to allow the parties to provide
2 their positions on these two issues?

3 MR. JAEGER: I believe we were thinking no later
4 than -- I would like it no later than December 31st, noon.

5 COMMISSIONER PALECKI: Okay. That will be my ruling.
6 All parties must provide their position on these issues by noon
7 on the 31st of December.

8 MR. LAPP: Mark Lapp. When we will get a written
9 version of that to actually see?

10 COMMISSIONER PALECKI: Staff, how soon could you get
11 the amended or the new draft prehearing order to all of the
12 parties?

13 MR. JAEGER: I could have this done -- I can send it
14 out Christmas Eve, if there is a secretary here.

15 COMMISSIONER PALECKI: Mr. Lapp, we will get that to
16 you on Christmas Eve either as a draft prehearing order, or
17 it's quite possible at that point I will actually have signed
18 it and it will be the final prehearing order. But we will make
19 sure that we get the language to you on Christmas Eve.

20 MR. LAPP: (Inaudible).

21 COMMISSIONER PALECKI: Excuse me, we did not hear
22 that?

23 MR. LAPP: I will wait to open it on Christmas Eve.

24 COMMISSIONER PALECKI: It will be a nice Christmas
25 present.

1 MR. JAEGER: Commissioner Palecki, what I was
2 thinking you could do is since we would not issue -- I was
3 thinking about issuing the -- if it would be okay to issue the
4 prehearing order on January 2nd with all the changes so it
5 would be completely done and everything there.

6 COMMISSIONER PALECKI: That really makes a lot more
7 sense. Mr. Lapp, I had stated that it may be a signed order,
8 it will not, because I would prefer having all of the parties'
9 positions incorporated. And since we won't have them in time,
10 we will send you a draft either Christmas Eve or as soon as we
11 can have it available.

12 MR. LAPP: (Inaudible).

13 COMMISSIONER PALECKI: Okay. Are there any pending
14 motions?

15 MR. JAEGER: We just have the pending petition of
16 Fasano, and Mr. Deterding will let us know if he has a problem
17 with that. And that will just be an administrative order if he
18 doesn't. If he wants to file a response, then I will run the
19 order through you for your approval.

20 COMMISSIONER PALECKI: All right. Are there any
21 other matters? Now, Section 23 (sic) of this draft prehearing
22 order is rulings. I will incorporate under Section 23 (sic)
23 all of the previous rulings that I have made in this prehearing
24 order.

25 And hearing no further matters, we will close the

1 prehearing conference.

2 MR. DETERDING: Thank you, Commissioner.

3 (The prehearing concluded at 10:55 a.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

10

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

13

DATED THIS 27th day of December, 2001.

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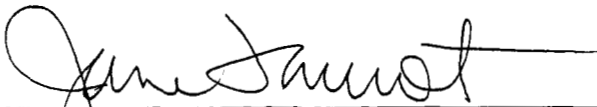
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JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732