

ORIGINAL



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February 12, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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RE: Docket No. 010503-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Statement of Issues and Positions and Brief for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Statement of Issues and Positions and Brief in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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BEFORE THE FLORIDA 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
DATED: February 12, 2002

**CITIZENS' STATEMENT OF ISSUES
AND POSITIONS AND BRIEF**

The Citizens of the State of Florida, through their attorney, the Public Counsel pursuant to and consistent with Order No. PSC-02-0016-PHO-WU, hereby file this Statement of Issues and Positions, and Brief.

ISSUES AND POSITIONS:

ISSUE 1: Is the utility's quality of service satisfactory?

POSITION: No. The entirety of the customer testimony demonstrated that the product and the service provided by Aloha is totally unacceptable.

DISCUSSION:

A regulated water utility provides only one product--water. Accordingly, there are only two basic components for determining the quality of a water utility's performance: (1) the quality of the product delivered, and (2) the customer rapport developed in the delivery of its product. According to the near-unanimous customer testimony, Aloha has failed dismally on both counts.

Witness after witness described Aloha's water is totally unsuitable.

Representative Fasano testified:

Shortly after my election as a state representative, I began to receive phone calls from constituents who are customers of Aloha Utilities. I learned very quickly that the

problems with this utility company was not isolated to just a few homes scattered around the servicing delivery area. What struck me was not only the number of complaints I began to receive but the severity of the problems these people were experiencing. Those problems were many and varied. From relatively simple complaints to lower water pressure to horrendous reports of black, foul smelling water gushing from their taps, my office, my staff was inundated with calls and letters from unhappy Aloha customers.

There is no rhyme or reason to the black water incidents. Day or night, summer or winter, the black water appears. Sometimes it shows up in customers' washing machines as clothes are being rinsed. I've been even told that it will show itself in the middle of a child's evening bath. Like a specter, it appears at the most inopportune times and without apparent cause.

[T-12,13]

Mr. Oberg stated:

My wife will not cook with it. I wouldn't dare to make coffee with it, would you?

And

We're here to dispute the raise that they want, and I'm against it unless they give us better water and clear water that we can use.

About all we can use the water for is washing clothes, which occasionally turn gray, and taking showers.

[T-79]

Mr. Bilancione testified:

Now I want you to understand now, I've lived in Pasco County 30 years. I lived in Port Richey, and I was a Councilman and a Commissioner for the City of Port Richey, and living in Port Richey for 23 years, my copper wire in my house has been there all these years, and I've never had a problem with that water being black, discoloring, or anything happening to my faucets, not until I reached Heritage Lake where we're being serviced by Aloha Gardens. Whatever the problem really is, I believe that somehow the filtering system in Aloha Gardens may not be as well as it was in Port Richey, because as long as I lived in Port Richey and being a Commissioner in Port Richey, I've never heard a complaint about our water until I reached Heritage Lake and I see all these complaints.

[T-86, 87]

Mr. Hawcroft testified:

Our home is served by Aloha Utilities, and the water that comes to our home is foul smelling and discolored as it comes from the taps in our home. We have constant problems with this situation. Stained laundry and the need for consuming bottled water are rules for the day.

[T-91]

Mr. Wood testified:

Regretfully I am forced to be an Aloha Utilities customer. I have brought black water to many PSC hearings in the past five years, both here and in Tallahassee. The water

today is just as revolting as it was in September of 1996, five months, four months after I had moved into my new home and we had a hearing in New Port Richey where thousands of people showed up and brought water. When I got up to speak that day, I couldn't move at the table with all the black water bottles. Nothing, absolutely nothing has changed since that date.

[T-164]

Numerous other witnesses throughout the morning voiced the same objections. As the Commissioners surely will recall, the hearing room was also full with people who did not testify, but who voiced strong agreement with the speakers criticizing the water quality. In addition, a number of customers who signed up to testify were not able to stay throughout the proceedings and left the hearing before their turn to speak. [T-194]

At the evening hearing, the same concerns were raised by the customers. Mr. Wickett testified:

I have lived in Trinity Oaks. I've lived there for nine years, and I've lived in the New Port Richey area, downtown New Port Richey for 30 years, so I've been a resident of this Pasco County for 41 years.

We have never been in this situation before. Downtown New Port Richey, we never had a water problem.

I came down here, lived down here in a new home on Wyoming Avenue with copper pipes, and we never had a water problem. Like I said, we never even envisioned that

we could ever have a problem. We moved to Aloha, and we started having the problems.

[T-282-284]

Mr. Logan stated:

But it's still ridiculous to ask for this kind of money for water that my wife don't even want to take a tub bath in, an \$800 garden tub, so when you run water you've got this black stuff floating around. You got to wipe it off, it's like grease. It's black. It's garbage. And I probably waste 20 gallons of water trying to flush the pipes out before she could even use a garden tub.

[T-290, 291]

Ms. Nowak said she "watched the quality of [her] water go totally down" [T-295]. Mr. DeDepergola described his "stinky and lousy, miserable water." [T-312] Mr. Karas said that "about the only good thing I can say, you've got a good name there, 'Aloha,' and that's about it." [T-317] Ms. Skipper said: "I do not drink the water. I do not like to bathe in it. I believe that my children come out of my swimming pool cleaner than out of the bathtub, and that's using no soap." [T-322]

Mr. Legg described his water as "very black, very dirty." [T-325] Ms. Whitener testified "We just moved in six months ago, and we never would have purchased the kind of place we did and invested the kind of money that we did if we would have known there was going to be such a big water problem." [T-334] Mr. Rifkin also describes his water as "dirty, black, stinking. . . ." [T-336] and Mr. Lewandowski describes the quality of water as "less than poor" [T-339].

The foregoing rendition does not exhaust all of the complaints about the water quality. Several of the witnesses testified that they represented heavily populated neighborhood associations, whose members also had problems.

Mr. Marden testified:

“I am here today as a representative of the Heritage Lake Community Association. And my complaint at this time, it could have been dirty water, but I’m sure that many residents have already before me and in Heritage Lake submitted their dirty water to no avail.

[T-70]

Mr. Rifkin testified:

“He had stinking, dirty yellow water. That’s what was coming out of his pipes, and Aloha tried to say, no, that he didn’t, no problems at all. We’ll, I’m vice president of the Chelsea Place Homeowners Association, and I talk to people in the neighborhood, and every one of them said the same thing.

[T-338]

So in addition to those individuals who actually testified, some of the speakers represented large numbers of additional customers through their homeowner association groups.

The Commission should also recognize the repeated reference that customers have been demoralized by Aloha’s inaction on the issue. Several witnesses stated that their neighbors have given up on the process because their complaints have gone unheeded for so long. As Mr. Hartinger testified:

“Well, it’s another year and here we are again in a meeting with the PSC and Aloha Utilities. When I first heard of this scheduled meeting, I thought that I would attend and put in my two cents again. This is the third time.

I typed up a statement and then I set it aside. In the days following that I thought, why bother going? It’s all been said before and it’s all been done before. We all brought our samples of filthy water and we made our comments public and, so what, nothing has changed.”

[T-137, 138]

Numerous other witnesses expressed this same notion that customers have just become cynical with the process. Mr. Marden [T-70], Mr. Hawcroft [T-91], Mr. Correlli [T-127], Mr. Chestnutt [T-132] all noted the repeated complaints that have brought no relief to the problem. Being thus demoralized, numerous customers did not trouble themselves to participate in the process. In assessing the totality of the customer dissatisfaction, the Commission should consider: (1) the customers who did not testify because they have been demoralized by the apparent inaction in response to their past complaints; (2) the customers who did not themselves testify because they were represented by their neighborhood association leaders; (3) the vocally supportive customers in attendance at the hearing who chose not to testify; (4) the customers who signed the initial list to testify, but who had to leave before they were called to testify; and (5) the customers who actually did testify. It is clear beyond any argument that Aloha’s product does not meet its customers’ satisfaction. As Mr. Larkin testified:

“I’ve been coming down here since before Commissioner Deason started in this business in 1977, and I’ve been in hundreds of rate cases, and I’ve never seen anything like this.”

“I’ve really never seen customers so irate as what I’ve seen here.”

[T-675]

Throughout the entire procedure addressing the black water, Aloha has pointed to DEP as justifying its product. Aloha’s mantra has been that as long as the water meets DEP standards, then it should be considered satisfactory for its customers. The testimony of DEP Environmental Specialist, Gerald Foster, however, clearly demonstrates the fallacy of Aloha’s contention. Mr. Foster stated:

Q. [By Mr. Burgess] Mr. Foster, so at this point Aloha’s water meets all quality standards imposed by DEP; is that correct?

A. Yes.

Q. Now you’ve been here through the hearings; is that correct?

A. Yes.

Q. So you’ve heard the testimony?

A. Right.

Q. And, and you’ve seen the samples, some of which are still behind, well, actually some of which is still right there on the table with you?

A. Yes.

Q. Do you have any reason that you wouldn't believe what the customers have testified about the source of the water?

A. I have no reason to doubt what they're saying, no.

Q. That, in fact, some of this is, is from an ice maker and some of this is from the tap at the tub and some of this is from the tap at the kitchen sink?

A. No reason to doubt what they're saying.

Q. So can I, would you, would I be correct in assuming that you wouldn't find that water particularly drinkable?

A. From the way it appears now, no, I wouldn't.

Q. So I could understand properly that water could, that comes from a tap at a home could meet all DEP standards and not be drinkable?

A. Well, sir, again, my judgment is the water that is tested and the results presented to me meet the state standards.

Q. Right. So they can meet the state standards and yet the water that ultimately is available to the customers in the, in these sources in their homes can be such that it's not drinkable or at least not by, by the standards, by your subjective standards of drinkability?

A. That could be correct, yes.

[T-364-366]

Mr. Foster's candor makes the point with absolute clarity: water can meet all of the officially required standards, and yet be utterly undrinkable. Not only undrinkable, anyone at the hearing can

attest that the sample water was also unfit for bathing. Incredibly, then, Aloha argues that its water must be found acceptable even when it is unfit for either drinking or bathing.

Aloha's position defies rational thinking. The two most important purposes for water are drinking and bathing. If the water is unfit for those purposes, how can it be considered even marginally adequate?

The Commission should not view this question exclusively as a matter of whether the water meets the minimum technical DEP requirements. When the DEP Environmental Specialist testifies that he would not drink certain samples of Aloha's water even though it meets DEP's minimum technical standards, then another standard for suitability of purpose must be sought. The Commission should consider the value and quality of water in the context of its fitness for its primary uses. As Dr. Kurin testified:

I'm a physician by profession and have an additional degree in chemistry and was a lecturer in physical chemistry before obtaining my medical degree. Today, I sit before you to present evidence to show that the public water supply which I receive through the pipes in my home does not meet the community standard of potable water.

[T-98, 99]

and

Within a month of our arrival, after cleaning out the toilet tank to get rid of the stagnant water, we realized that there was a problem of which we were not initially aware of but which had been the focus of attention by the Wyndgate and Chelsea Place communities for several years. The history of this matter is well-known to

most of the audience, and I do not intend to go into it. Suffice it to say that in spite of the affirmations by Aloha Utilities about its water meeting federal and state standards for the solid material and contaminants, the water that comes out of the tap does not meet the common sense standard of appropriateness.

[T-99, 100]

It is this “community standard” or “common sense standard” that the Commission should also consider in determining whether the quality of Aloha’s service is acceptable. Under any kind of common sense, water that is undrinkable is of unacceptable quality.

The Commission should find that Aloha’s service is unsatisfactory.

ISSUE 2: Should the utility’s rate increase request be denied due to poor quality of service?

POSITION: Yes. Regulation should simulate the results of competition. If Aloha were forced to compete for business, it would not be able to raise prices for the quality of service it provides.

DISCUSSION:

Similar to Dr. Kurien’s recommended adoption of a community standard or a common sense standard, Mr. Larkin recommended that the Commission adopt a competitive standard for service.

[T-665] As Mr. Larkin explained, Aloha’s water quality and service would fail this standard.

The competitive principle requiring that regulation be a substitute for competition would view both price and service from a competitive standpoint. If the provision of water services were a competitive product, and the customers of the Seven Springs Water Division of the Aloha Utility had a choice, they would clearly reject to deal

with Aloha because of the poor quality of the water service provided. Aloha's water quality would not meet a competitive standard, and in a competitive environment would be rejected by customers.

[T-666]

If Aloha's customers were allowed the freedom to choose, they would choose to do business with another provider. Florida laws, however, do not give this freedom to Aloha's customers. They cannot drill their own wells, and they cannot go to an Aloha competitor. In exchange for taking away this freedom of the market, Florida laws impose a regulatory framework on the utility monopoly. Accordingly, the regulatory framework should act as a surrogate for the open market. Mr. Larkin explained this proposition, as follows:

Customers are required to purchase water (a product that one must have to live) from a single designated supplier. Since the customer choice is removed, a strong regulatory process is the only thing that remains to keep the supplier "honest."

[T-667]

If regulation truly acts as a surrogate for competition in this case, Aloha should not be allowed any rate increase. If Aloha had to compete with its product, it would not be able to keep its customers if it tried to raise its prices. As Mr. Larkin testified:

I have never encountered a higher level of customer dissatisfaction. If Aloha faced any competition, it would lose customers in droves - even at the current rates. At this level of disapproval with its product, if a competitive enterprise were to actually be brazen enough to increase prices, it would assure a mass exodus of its customers.

[T-668]

Mr. Larkin's testimony describes what he calls a competitive standard. This standard is strikingly similar to what Dr. Kurien described as a community standard or common sense standard. [T-99] Under this standard, the expenditures that Aloha is seeking to recover would not be considered to be just or reasonable.

As Mr. Larkin explained:

Aloha, on the other hand, is trying to manipulate the regulatory process to turn this competitive reality on its head. Aloha says first give us an increase in our prices, and only then will we set about to improve our product to a level that our customers will find acceptable.

I contend that Aloha should be held to the same standards that apply in a competitive market. Just as it would in a competitive environment, Aloha should first be required to demonstrate a product acceptable to customers, and then be considered for increased rates.

[T-668]

In a competitive setting, a business cannot raise its prices when it offers an inferior product. Aloha's customers should not be required to pay higher prices for Aloha's inferior product. The protections of the regulatory process should not be a one-way street. The regulatory process protects Aloha from facing any competition; the regulatory process should also protect Aloha's customers from paying higher prices for an inferior product.

Aloha's rates should not be increased until its product is improved.

ISSUE 3: What is the appropriate cost of the Commission ordered pilot project to include in working capital for the Seven Springs water system?

POSITION: This project has essentially been suspended and the company has spent much less than projected. The average cumulative balance of expenditures projected for the test year of \$54,270 should be used instead of \$190,000. Therefore, working capital should be reduced by \$135,730.

DISCUSSION:

Aloha chose the year 2001 as being a representative test year. When Aloha chose 2001 as its test year, all of the accounts were projected, rather than actual. At the time of the hearing, however, most of the actual 2001 monthly balances had become available.

The test year was approved on an average year rather than year-end basis. Thus, all rate base entries were the average of the projected monthly balances over the course of the year. For the pilot project, Aloha projected the capital expenditures to be incurred evenly over the course of the test year. Accordingly, Aloha added one-half of the projected year-end balance to the rate base. In concept, this is the proper way to estimate the average monthly balance for a capital expenditure that is incurred evenly over the course of the year.

When the actual monthly balances became available, however, those actual numbers became the most accurate reflection of what the test year pilot project investment was. There is no longer any need to rely on what Aloha estimated would be spent, because now we know how much they did spend. In other words, why continue to pretend that Aloha had an average monthly investment of \$190,000, when we know it actually had a monthly investment closer to \$54,270? Put another way,

why should the average test year customer pay Aloha for an investment that Aloha did not make during the test year?

Ms. DeRonne explained both the rationale and the mechanics of her adjustments to more accurately reflect the actual investment during the test year:

The issue I brought forward here is that in calculating the projected year working capital requirement of the company, the company based it on the total cost of that projected divided in two. And what I recommend is that the amount in the working capital calculation be based on the amounts that were actually incurred in that 12-month period. And in my adjustment I had eight months' worth of actual and then I estimated the next four months to determine the actual impact on working capital in the rate year.

[T-760]

and

I'm not saying they should never recover the costs of this pilot project. What I'm saying is that for calculating working capital in this case that it be based on the company's actual, the way the amounts were actually expended.

[T-761]

Aloha would have its customers pay for an inaccurate estimate of an investment made with the erroneous assumption that it was made evenly over the course of the test year. Instead of Aloha's estimate and assumption -- both of which we know to be in error -- the Commission should adopt Ms. DeRonne's approach and reduce working capital by \$135,730.

As an alternative, OPC recommends the Staff position. The Staff approach provides even more accuracy than Ms. DeRonne's. OPC's only hesitation is that the final numbers were not available in time to present at the hearing. When Ms. DeRonne prefiled her testimony, she used the most up-to-date numbers available at that time. OPC, however, agrees in principle with Staff's position.

ISSUE 4: What is the appropriate working capital allowance?

POSITION: The working capital should be adjusted to reflect either the OPC position or the Staff position on Issue #3. The ultimate working capital amount depends on which position the Commission adopts on Issue 3.

ISSUE 5: What is the appropriate projected rate base?

POSITION: The appropriate amount is subject to the resolution of other issues. The final result will depend on the Commission's decisions on each of the specified rate base related issues.

ISSUE 6: What is the appropriate projected cost rate for variable-cost related party debt?

POSITION: This issue has been stipulated.

ISSUE 7: What is the appropriate projected weighted average cost of capital for the projected test year ending December 31, 2001?

POSITION: This issue depends on the Commission's resolution to other issues that affect the weighted cost.

ISSUE 8: What are the appropriate number of gallons sold for the projected 2001 test year?

POSITION: In 2000, rainfall was the lowest in Pasco County for the entire 85 years that SWFWMD has kept rainfall records. Staff and OPC have normalized for weather-related variables. In 2001 the weather pattern was very close to the historic norms, and actual usage validates the OPC and Staff projections.

DISCUSSION:

The Citizens presented the testimony of two witnesses on this issue: Mr. Bidy and Mr. Stewart. Both witnesses recognized that there were drought conditions in the year 2000 and in those years immediately preceding 2000. [T-777; T-874] Mr. Bidy used the actual usage for the year 2001 that was initially made available to him through discovery. That usage was as of June, 2001, or exactly one-half of a year. Mr. Bidy then doubled the actual usage through June 2001. Mr. Bidy then calculated the historic 1995-2000 mid-year ratio (50.92%), which validated his projection. In Mr. Bidy's own words:

Exhibit TLB-3: This exhibit calculates a historic annualizing factor for the first six months sale of water as a percentage of the actual annual sale of water by Aloha. The calculation of the annualizing factors considers the six year actual data from 1995 through 2000. The average of these six years shows that 50.92% of the total annual water sales had occurred by the end of the first six months of the year. Therefore, my methodology in Exhibit TLB-2 of doubling the water sold during the

first six months of 2001 to arrive at a projected total water sold for the year appears to be reasonable.

[T-779]

Mr. Stewart simply accepted Aloha's projected ERC growth and multiplied the total ERC's by the average usage per ERC from the period 1995-2000. Mr. Stewart testified:

Q. HOW DID YOU ARRIVE AT AN AVERAGE GALLON PER DAY USAGE FIGURE PER ERC?

A. I took the average gallon per day usage per ERC over the period of 1995 to 2000 as provided by the utility in Schedule F-9, Page 1 of the MFR.

Q. HOW DID YOU ARRIVE AT THE PROJECTED AVERAGE NUMBER OF ERC'S FOR 2001?

A. I accepted the year 2001 ERC's as projected by the Utility and calculated an average number of ERC's for 2001.

Q. GIVEN THESE CALCULATIONS, WHAT IS YOUR PROPOSED 2001 WATER USAGE?

A. Referring to Schedule 4 of my exhibit, the methodology I employed proposes a reasonable consumption figure of 998,492,175 gallons [**this number has since been modified to 1,021,416,000**] for 2001. This number is arrived at by multiplying gallons/day usage by 365 and by the projected average number of ERC's.

[T-876]

Given the recommendations from its two expert witnesses, OPC has proposed the more conservative route. Ms. DeRonne testified:

Q. Ms. DeRonne, you say you flowed through the projected usage recommended in the testimony of Mr. Stewart. Did you also review the testimony of Mr. Bidy in this regard?

A. Yes, I did. And the reason I flowed through Mr. Stewart's as opposed to Bidy was to take a more conservative approach as it had projected slightly more gallons than Mr. Bidy had.

[T-740]

The OPC has used Mr. Stewart's number of 1,021,416,000 gallons. The fact that Mr. Bidy's number would result in a lower revenue requirement of Aloha demonstrates the reasonableness of the OPC approach.

Should the Commission reject both Mr. Stewart's and Mr. Bidy's proposals, OPC recommends that the Commission adopt Mr. Stallcup's projection of 1,016,121,784 gallons. [T-1062]

ISSUE 9(a): What is the appropriate projected number of purchased water gallons from Pasco County, and what is the resulting expense?

POSITION: For purposes of setting rates for the test year, 324,062,114 gallons should be used as a projection of water to be purchased from Pasco County. At \$2.35 per thousand gallons, the resulting expense would be \$761,546.

DISCUSSION:

The outcome for this issue is dependent primarily on the commission's decision on Issue 8. For purposes of discussing this issue, it can be said that Aloha has access to two basic sources of

water: the water from sources governed by Aloha's own Water Use Permits; and the water from Pasco County. The Pasco County water is by far the more costly source for Aloha. To the extent possible, therefore, Aloha has tried to minimize the amount of water it must purchase from Pasco. As a result of this practice of limiting what it must purchase from Pasco, Aloha historically has exceeded its own WUP limits by substantial margins.

Following the outcome of this case, however, Aloha says it will no longer exceed its WUP limits. If this is true, the amount of water that will need to be purchased from Pasco will be Aloha's total demand (including flushing, etc.) minus the amount Aloha can withdraw under its own WUP's.

Accordingly, the proper projection for purchases from Pasco County is Aloha's total system demand minus Aloha's WUP limits. Since the total system demand is the subject of disagreement under Issue 8, the outcome of that issue will largely determine the result for Issue 9(a). Based on the OPC position on Issue 8, the amount to project for purchases from Pasco County is 324,062,114 gallons.

ISSUE 9(b): Should a provision be made to monitor whether the gallons pumped from Aloha's wells differs from the maximum permitted quantity on an annual average basis under the Water Use Permit (WUP)?

POSITION: Yes. The final order should include a provision that if the WUP is exceeded by more than a reasonable percentage, corresponding refunds will be required of Aloha.

DISCUSSION:

The issue of the greatest impact in this case is the amount of water Aloha will purchase from Pasco County. The revenue requirement in this case is being set on the assumption that Aloha will

not exceed its WUP. Historically, however, Aloha has pumped beyond its WUP limits. Should Aloha continue to exceed the WUP limits, the utility would collect more revenue than is actually required, and would automatically overearn. With this major factor in the unilateral control of Aloha, the customers need some additional protection against being charged excessive revenue. OPC recommends that the final order include a statement that if the WUP continues to be exceeded by more than a reasonable percentage, corresponding refunds will be required of Aloha.

ISSUE 9(c): What provision should the Commission make within rate setting for the potential shortfall or excess if usage by customers differs from that included in the rate setting?

POSITION: No special provision should be made. Aloha is seeking an unprecedented guarantee that is not contemplated in the regulatory process.

DISCUSSION:

No special provision should be made. Instead, the Commission should project normalized customer usage as accurately as possible, just as in every other rate case. This projection will give Aloha the opportunity to earn a reasonable rate of return on its investment. Just as with every other variable projected in setting rates, the actual amount may (probably will) be different from the projected. The difference could be either to Aloha's advantage (a greater return) or to Aloha's disadvantage (a lesser return). This is the risk that a utility absorbs in the regulatory process. The Commission should not depart from these fundamental rate setting principles in this case.

ISSUE 10: Should projected chemicals and purchased power be adjusted?

POSITION: Yes. Two basic adjustments must be made. First, the numbers of gallons treated must be reduced to reflect the outcome of Issue 8. Second, the inflation factor should be removed because it is inconsistent with the actual test year data.

DISCUSSION:

The chemical expense is a function of the number of gallons that must be treated, and the purchased power is a function of the numbers of gallons that must be pumped. Aloha's method for projecting 2001 chemical and purchased power expenses was to begin with the actual expense incurred in the year 2000. For the chemical expense, Aloha added the 4.688% ERC growth rate and a 2.5% projected inflation rate. [T-726] For the purchased power expense, Aloha added the ERC growth rate of 4.688%. [T-726]

The error in Aloha's projections is that by using the year 2000 as its base, Aloha has overstated the starting point. As explained in Issue 8, the number of gallons sold per ERC in 2000 is well out of line with what can be expected in the future. By overstating the starting point and adding the anticipated ERC growth, Aloha compounds the error. As Ms. DeRonne explains:

As indicated by OPC Witness Steven Stewart, the historic test year level of water consumption was higher than normal due to weather conditions in the historic test year. The amount of chemicals and purchase power necessary would be more directly related to the total amount of water that is treated and pumped, rather than the number of customers or ERC's.

[T-726]

Because these expenses are more appropriately tied to gallons rather than ERC's, Ms. DeRonne recalculated both the chemical and purchased power expense, using consumption projection factors rather than the ERC growth factor.

The Citizens are aware that Aloha has submitted late-filed exhibit 35, which shows that purchased power is higher than projected. These numbers, however, have not been subjected to audit, discovery, or cross-examination. It must be noted that some further explanation is necessary to justify why the purchased power increased dramatically more than the total gallons as shown in exhibit 34. The Citizens submit that the best explanation for the purchased power increase is that during the second half of 2001, a greater number of gallons was pumped from Aloha's wells as the purchases from Pasco were being reduced significantly.

Because this theory, as well as any others, cannot now be explored by OPC, Aloha's late-filed purchased power expense data should not be accepted to alter the outcome of this issue.

With regard to the chemicals, Aloha also erred by using an inflation factor when no inflation has been demonstrated for the primary chemicals used by Aloha. Ms. DeRonne testified:

The two largest components of the Company's chemical expenses are chlorine gas and Aquadene Liquid. In response to OPC Interrogatory 5, the Company provided a breakdown of the chemicals it purchased through June 2001 in both quantity and unit cost. The quantities and unit costs for chemicals purchased in the historic test year were provided in workpapers to the Company's filing. Based on a review of the information provided, the unit cost per pound for chlorine gas was \$0.47 for all of 2000 and through at least June 2001. The unit cost per gallon of Aquadene Liquid was \$10.10 for all purchases in 2000 and 2001 to date. The two largest components

of chemical expense have not changed and have not increased by the 2.5% inflation factor.

[T-727]

Consistent with the reasoning noted above, Ms. DeRonne removed the inflation factor from Aloha's chemical expense. It should be noted that Aloha's exhibit 35 supports this conclusion.

ISSUE 11: Should an adjustment be made to employee salaries and wages for open positions?

POSITION: Shortly before the hearing, Aloha filled a large number of formerly vacant positions. Aloha should recover for those positions, but the Commission should continue to monitor Aloha's personnel vacancy ratio. The Commission should also remove a portion of the pension expense to recognize the number of ineligible employees.

DISCUSSION:

When OPC began its discovery, Aloha had a number of vacant positions. Ms. DeRonne testified:

As shown on Schedule B, I recommended that the entire \$107,850 added by the Company for the ten additional employees be removed. These positions have not been filled to date, and the employee compliment has declined even further. Considering the Company's high historic employee turnover rates and problems retaining employees, along with the further reduction of employees, it is not realistic to assume that the Company will retain thirteen additional employees in the near future, or that 100% of the Company's proposed employee positions will both be filled and remain filled.

[T-714]

Shortly before the hearing, however, Aloha supplied discovery information indicating that all of its positions had been filled. OPC commends Aloha's effort, and Ms. DeRonne agreed that if the positions are filled at the proposed salary levels, Aloha should recover the expense:

Q. [By Mr. Deterding] Okay. So if - - let me summarize what I think you just told me is that if these positions had been filled at the salary levels that were proposed and if there have been no other positions that have become vacant, you would agree they should be recognized in rate setting?

A. I wouldn't disagree with it in this particular case, no.

[T-747]

Nevertheless, two concerns remain. First, because of Aloha's history of turnover and of having a significant number of vacant positions, OPC believes the Commission should keep a close watch on Aloha's personnel vacancy ratio. Customers should not be forced to pay for a level of service which contemplates that 100% of the positions will be filled 100% of the time, if in fact there regularly exists a significant ratio of vacant positions.

The second concern is that even with the positions filled, not all employees are eligible for pension benefits. As Ms. DeRonne explained:

Q. But isn't it true that the utility starts incurring expense for them from day one of their employment?

A. They're not required to provide those benefits to, the employees are not eligible for that plan until they have been there a full 12 months. And with the high

employee turnover rate with this company that becomes a little bit more of a concern than what may be the norm.

[T-748]

It is clear, then, that Aloha's new employees are not eligible for pension benefits until they have worked a full year. Further, based on Aloha's employee turnover history, it is almost certain that there will always be an ongoing percentage of the employees who are not eligible for pension. It would be unfair to force the customers to supply funds for these phantom pension benefits. Such money would unjustly enrich Aloha. To prevent this injustice, the Commission should remove a portion of the pension expense to reflect the employee turnover factor.

ISSUE 12: Should an adjustment be made to employee salaries and wages to correct the annualized salary of the utility operations supervisor?

POSITION: The Citizens' understanding is that this issue has been stipulated.

ISSUE 13: What adjustments should be made to pension expense?

POSITION: The Citizens have agreed with the pension expense adjustment of \$40,509. The benefits percentage of 22.10%, however, should not be applied to the entirety of the pro forma salaries as explained in Issue 11.

ISSUE 14: Does the utility have excessive unaccounted for water, and if so, what adjustments should be made?

POSITION: Aloha reported 9.20% unaccounted for water in 2000. That 9.20% should be used to determine the demand for water purchased from Pasco County. Alternatively if the 10.2% reported for 2001 is used, then purchased power, chemical and Pasco County purchased water expense should be reduced by 0.2%.

ISSUE 15: Should an adjustment be made for related-party purchased water transactions?

POSITION: Yes. OPC agrees with Staff that the royalty fee charged by the related parties should, at a minimum, be reduced to \$0.10 per thousand gallons. This would result in a minimum reduction of purchased water expenses of \$88,330.

DISCUSSION:

This issue is a quintessential example of a utility seeking to shift the burden of proof to the Commission. In his testimony, Mr. Fletcher provided legal precedent for the proposition that it is a utility's burden to prove that its costs are reasonable, and the burden is even greater when the transaction is between related parties [T-960]. The Commission has provided Aloha not only with ample opportunity to meet its legal burden, but also with specific instruction on how that burden could be met. As Mr. Fletcher pointed out, the Commission dealt with this same issue in the 1995 Florida Cities Water Company case. In that case, Order No. PSC-96-0859-FOF-WU provides a detailed description of the PSC's analysis for testing the reasonableness of related party royalty fees [T-959]. Further, in Order No. PSC-01-1374-PAA-WS, the Commission gave Aloha itself explicit instruction on how it could meet the burden of demonstrating reasonableness. [T-960]

As a result, Aloha has been on notice and has been given more than ample opportunity to bring forward the type of evidence necessary to evaluate the reasonableness of the related-party

royalty fees. Despite the Commission's various suggestions on the type of proof that would be adequate, Aloha has stubbornly refused to bring forward reasonable proof. Aloha should not be rewarded for its conscious refusal to bring forward the type of information necessary for the Commission to perform a cost-based comparative analysis.

Aloha is paying a royalty fee to its related parties that is more than triple the royalty fee it is paying at arms length. Particularly in light of the fact that the Mitchell property royalty agreement actually provides greater rights to Aloha than do the related-party royalty agreements [T-962], Mr. Fletcher was eminently reasonable in recommending that the same royalty rate for the arms-length transaction be imputed to the related-party agreements.

ISSUE 16: What is the appropriate amount of rate case expense?

POSITION: The company should have consolidated this current water rate case with its most recently filed wastewater case. Amortization expense of \$111,625 should be removed from O&M expenses and \$223,250 representing the average unamortized balance should be removed from the utility's working capital allowance.

DISCUSSION:

Rate case expense has always been an area of rate proceedings that customers find particularly galling. Case after case, customer groups inform the OPC that they are shocked and insulted to learn that they must pay for a case to be put on against themselves. No other single issue generates more ill-will among customers than to be forced to fund the utility's efforts to raise their rates. To this long history of ill-will, Aloha has found a way to add another cruel twist.

Aloha only recently completed a wastewater case in which it spent over \$400,000 in rate case expense. Now Aloha again seeks more than \$400,000 to present its water case. As Mr. Larkin pointed out, the separation of a water case from a wastewater case is itself an unusual step:

A utility generally files its water and wastewater cases together. This is because a company's concern is with its overall financial health.

[T-669]

In addition to the extraordinary decision to separate the cases, Aloha spent a remarkable sum for each case. These actions seem almost designed to punish Aloha's customers. It certainly does not reflect a decision making process that is made in the customers' best interest.

These customers are legally prohibited from seeking service elsewhere. They are reliant on the Commission to ensure that business decisions are made efficiently and in the customers' interest. This does not appear to be the case in the decision to separate the rate case. As Mr. Larkin testified:

Aloha is expecting its customers to pay for this wasteful approach. Because it expects the customers to pay for the redundant rate case, Aloha does not seem to care about its extreme inefficiency. I assure you that if rate cases were funded by the utility - rather than the customers - Aloha would have found a more efficient way to proceed.

[T-669]

and

Aloha should have consolidated its water and wastewater needs into a single case. Because it chose to file two separate cases, Aloha itself should be required to pay for the second one.

[T-669]

Aloha should not be allowed to recover any of the costs that would have been saved by consolidating the cases.

ISSUE 17: What conservation programs, and associated expenses, are appropriate for this utility at this time?

POSITION: At this point, there is no agreement between Aloha and SWFWMD. Aloha's customers should not be burdened with rates to pay for non-existent programs.

ISSUE 18: What is the test year operating income before any revenue increase.

POSITION: The appropriate amount is subject to the resolution of other issues.

ISSUE 19: What is the appropriate revenue requirement?

POSITION: As discussed in Issue 2, the Citizens do not believe Aloha is entitled to rate relief at this time. The calculation of a revenue requirement is subject to the Commission's resolution of a number of other issues.

ISSUE 20: What is the appropriate rate structure for this utility?

POSITION: OPC is not recommending a specific rate design. However, OPC believes the Commission should not approve the company's rate design as proposed because the resulting effect would be the collection of revenue in excess of the company's revenue requirement.

DISCUSSION:

Aloha's initial filing sought the Commission to cover its revenue requirement with the lower tier of an inclining block rate structure. Aloha had asked that the higher tier be used to cover certain conservation costs and various other programs.

The Citizens object to Aloha's request. The Citizens believe that all tiers of revenue should be used against the calculated revenue requirement. If a program is appropriate and proper it should be incorporated in the revenue requirement. The Citizens believe it is improper ratesetting to set aside "loose revenue" for funding an unspecified amount of program costs. From Mr. Watford's testimony at the hearing, it appears that Aloha has no strenuous objection to dedicating all tiers of revenue to a revenue requirement that subsumes all anticipated program costs. [T-1405, 1406]

ISSUE 21: Is repression of consumption likely to occur, and, if so, what is the appropriate adjustment and the resulting consumption to be used to calculate consumption charges?

POSITION: The Citizens accepted the 5% requested by Aloha in its MFRs, and therefore did not pursue a study to develop this issue.

ISSUE 22: What are the appropriate monthly rates for service?

POSITION: The appropriate monthly rates for service are subject to the resolution of other issues.

ISSUE 23: What are the appropriate service availability charges for the Seven Springs water system?

POSITION: The proper service availability charges are being determined in another proceeding. If the Commission decides to effect any changes, their impact will affect future revenue proceedings.

ISSUE 24: Should this docket be closed?

POSITION: In response to Issue 9(b), the Citizens recommended the PSC retain jurisdiction for a single limited purpose. With the exception of that purpose, this docket should be closed after the expiration of any appellate activity.

Respectfully submitted,



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CERTIFICATE OF SERVICE
DOCKET NO. 010503-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Post-Hearing Statement has been furnished by hand-delivery(*) or U.S. Mail to the following parties on the 12th day of February, 2001:


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