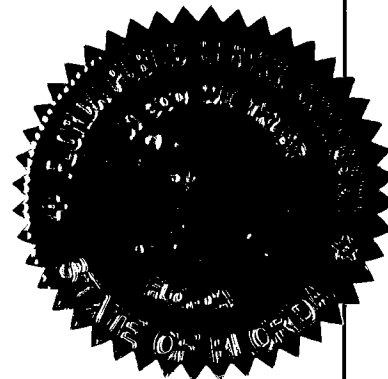


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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: AGENDA CONFERENCE
ITEM NO. 5

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER LILA A. JABER
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, January 20, 2004

TIME: Commenced at 9:45 a.m.
 Concluded at 11:45 a.m.

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

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

1 PARTICIPATING:

2 MARSHALL DETERDING, ESQUIRE, and ROBERT NIXON,
3 appearing on behalf of Aloha Utilities, Inc.

4 STEPHEN BURGESS, ESQUIRE, appearing on behalf of the
5 Office of Public Counsel.

6 JACK SHREVE, ESQUIRE, appearing on behalf of the
7 Office of the Attorney General.

8 SENATOR MIKE FASANO.

9 RICK MELTON, GENERAL COUNSEL, RALPH JAEGER, ESQUIRE,
10 MARY ANNE HELTON, ESQUIRE, and TRICIA MERCHANT, appearing of
11 behalf of the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 MR. JAEGER: Commissioners, Item 5 is staff's
3 recommendation concerning the appropriate amount of the refund
4 of interim rates collected by Aloha Utilities over the period
5 of January 1st, 2002, through July 31st, 2003, and the
6 appropriate amount of funds that should be maintained in the
7 escrow account.

8 For ease of reference, noting that different legal
9 arguments may apply, staff has divided the interim rate period
10 into two periods. The first period is from the beginning of
11 interim rates on January 1st, 2002, up to the issuance of the
12 final order on April 30th, 2002, and the second period is from
13 May 1st, 2002, through the termination of interim rates on
14 July 31st, 2003.

15 The first period up to the issuance of the final
16 order has been referred to as the rate case period, and the
17 second period after the issuance of the final order has been
18 referred to as the appeals period.

19 Up until April 30th, 2002, the rate case period,
20 there's only one staff recommendation, and that is that Aloha
21 has made the appropriate refunds. For the period beginning
22 May 1st, 2002, the appeals period, there are three separate
23 staff recommendations. Staff has recommended that
24 participation on Issue 2 be dependent on the Commission vote on
25 Issue 1. Issue 3 addressing interim rates for the refunds for

1 the appeals period is proposed agency action, and interested
2 persons should be allowed to participate.

3 Here today to address the Commission is Jack Shreve,
4 Senator Fasano, and I'm not sure who all else is over there,
5 but I know Jack Shreve is on behalf of the Attorney General,
6 Steve Burgess on behalf of OPC, and Marty Deterding on behalf
7 of Aloha.

8 CHAIRMAN BAEZ: Thank you, Mr. Jaeger. And to the
9 parties, I would urge their indulgence for a moment. Senator
10 Fasano has taken time out of his busy schedule to be with us
11 here today, and I know that he's got committee meetings that he
12 has to get to. So I know that this is a motion by the, by the
13 company, but if we could let Senator Fasano address the
14 Commission first so that we can get him on his way to his
15 important work, I would appreciate it.

16 Senator Fasano.

17 MR. DETERDING: Commissioner, if I may. I apologize.
18 Are we going to deal with the Issue I first? Because, if so,
19 that raises the whole question of whether there's any
20 participation by --

21 CHAIRMAN BAEZ: You're absolutely right,
22 Mr. Deterding.

23 Commissioners, let's take Issue 1 up quickly.

24 COMMISSIONER DAVIDSON: Move staff to allow
25 participation.

1 COMMISSIONER DEASON: Second.

2 CHAIRMAN BAEZ: Moved and seconded. All those in
3 favor, say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN BAEZ: Are we okay, Mr. Deterding?

6 MR. DETERDING: Well, I, I kind of wanted to speak to
7 that issue, but go ahead.

8 CHAIRMAN BAEZ: It's too late for that,
9 Mr. Deterding.

10 MR. DETERDING: All right. Thank you.

11 CHAIRMAN BAEZ: Senator Fasano.

12 SENATOR FASANO: Thank you, Mr. Chairman and members.
13 Honored members of the Florida Public Service
14 Commission, first I want to thank you for the opportunity to
15 appear before you today. And, as you all know, this is not my
16 first time to come before you regarding Aloha Utilities.

17 The case regarding Aloha Utilities that you are
18 considering is important not only to the customers who will be
19 economically impacted by your decision, but, Commissioners, the
20 precedent, the precedent your adoption of the staff's primary
21 recommendation may set here in the entire state of Florida.

22 If accepted, this recommendation will reverberate
23 throughout future rate cases and will negatively impact all
24 utility customers. I'd like to repeat that. It will impact
25 negatively to all utility companies' customers throughout the

1 state with what your decision -- in regards to your decision if
2 you support the staff's recommendation.

3 I could stand here, Commissioners, and rehash the
4 decade-long problems Aloha Utilities' captive customers have
5 experienced. I will not do that.

6 In several previous forums held since my first term
7 as then state representative you have heard me on countless --
8 and countless other customers testify as to poor quality of
9 water and service Aloha delivers. You already know that.
10 That's why, in fact, I believe you denied the rate increase
11 that they had requested over a year and a half ago.

12 Instead, I want to encourage you not to accept the
13 primary staff recommendation you have before you. Instead,
14 Commissioners, I'm here to encourage you to order a full refund
15 of all remaining monies held in escrow. And with all due
16 respect, Commissioners, this is the customers' money.

17 There is, of course, an argument far beyond what is
18 right and what is wrong morally and ethically. There is a
19 legal standard that needs to be considered in this case. We
20 should begin by recognizing the proper starting point for all
21 Public Service Commission decisions are to be made.

22 The Florida Legislature, the Florida Legislature has
23 directed that the regulation of utilities is declared to be in
24 the public interest, and this law is an exercise of the police
25 power of the state for the protection of the public health,

1 safety and welfare. The provisions of this chapter shall be
2 liberally construed for the accomplishment of this purpose, and
3 I'm sure you know that very well. So as you implement statutes
4 and regulatory policy, you need to keep an eye on the main
5 purpose, and that's the public interest. So I ask you,
6 Commissioners, how is the public interest best served in the
7 consideration of how to refund interim rates?

8 Well, first consider the purpose of interim rates.
9 The purpose is clearly not to give a utility company an unjust
10 enrichment. The purpose of interim rates is to protect a
11 utility against what you regulators call regulatory lag. A
12 rate case takes a long time, ten months or more, to complete.
13 During that several month pendency some utilities may need, and
14 I emphasize may need, higher revenues for their financial
15 stability. Those utilities cannot afford the several month lag
16 between their initial filing and the ultimate outcome of the
17 case. This is very understandable. So the Public Service
18 Commission authorizes temporary, temporary higher revenues
19 subject to a later refund until a final decision can be made.

20 After closely examining volumes of documents and
21 testimony, the Public Service Commission then knows just how
22 much revenue the utility is entitled to. It then
23 retroactively, retroactively adjusts the interim revenues in
24 light of the final revenues that are authorized. In creating
25 the interim statute, the Legislature recognized that it might

1 be unfair for a utility to be forced to wait ten months before
2 it is allowed to collect a revenue increase that it may be
3 entitled to on the first day of filing. The Legislature took
4 that into account. There's that lag time; therefore, the
5 utility company should be able to collect some sort of an
6 interim rate increase when that final rate increase, final rate
7 increase is decided upon.

8 The Legislature passed this interim statute to
9 prevent such an obvious unfairness to Florida utilities. Can
10 you believe that I'm sitting here, sitting here right now
11 trying to defend the utility companies on this -- in this area?
12 I can assure you the Legislature never, never, Commissioners,
13 intended this statute to be twisted in such a way that would
14 impose an equally obvious unfairness on Florida's taxpayers and
15 ratepayers. Fairness to the customers is as important as
16 fairness to the utilities. I think you would agree with me on
17 that. Aloha should not be allowed to use a statute designed to
18 protect it in a way that strips away the protection to the
19 customers.

20 The purpose, the purpose, Commissioners, of the
21 interim rates is simple and clear. It is simply to give the
22 utility an advance, an advance on the final revenue which is
23 ultimately authorized, an advance on the final revenue that is
24 authorized. The purpose is certainly not to allow any utility,
25 any utility to keep higher interim rates or revenues when the

1 Public Service Commission has determined that utility's
2 revenues are already fully adequate. Again, not to allow any
3 utility to keep higher interim revenues when the Public Service
4 Commission has determined that utility's revenues are already
5 fully adequate. That would be absurd. Common sense should
6 tell anyone that.

7 Just use logic and consider this, Commissioners,
8 first. On day one a utility files for a revenue increase.
9 Two, at the end of ten months the Public Service Commission
10 determines that the utility was already collecting a
11 satisfactory revenue and naturally denies any revenue increase.
12 I ask you, what lag could possibly exist? What lag time?
13 There is none because ultimately there was no grant -- no
14 revenue granted to the utility company. There is no regulatory
15 lag in this case, so there's no reason to keep any interim
16 rates that may not have been awarded. In this case no interim
17 rates were -- no final rates were awarded, just interim rates.
18 What could be simpler than that? Who could possibly interpret
19 the statute any other way? Who could possibly interpret the
20 statute any other way? How can a liberally construed reading
21 of the interim statute possibly result in such an
22 interpretation as to allow Aloha to keep any of the interim
23 revenue increases?

24 The undisputed facts are, one, Aloha was not entitled
25 to higher revenues when it filed its case. That's a fact.

1 Two, Aloha was not entitled to higher revenues at the end of
2 its case. That is definitely a fact. There is no
3 justification for Aloha to keep the temporary revenue increases
4 that it collected while it was waiting to find out that it was
5 not entitled to any revenue increase. What stops in the
6 future, if you side with the staff's recommendation that a
7 utility company, a water utility company decides to go ahead
8 and put in for a rate increase, what stops them from figuring,
9 well, we'll get an interim rate increase? We may not get any
10 rate increase at the end because we probably don't deserve it,
11 but we'll ask for a rate increase, we'll get an interim rate
12 increase because of that lag time, and then at the end of that
13 lag time it's decided that no rate increase, but go ahead,
14 utility company, keep the monies that you've collected
15 unfairly.

16 Please, Commissioners, don't let Aloha keep the
17 revenue that you yourself determined they were not entitled to,
18 and the courts, and the courts -- and, remember, Aloha fought
19 you and the courts upheld your decision. After years of
20 filthy, dirty water the customers have finally won one. Don't
21 crush their victory by allowing Aloha to keep the customers'
22 money, their hard earned money. I call upon each and every one
23 of you. This is a very important decision that you're going to
24 make right now. This will set precedent, this will have impact
25 throughout the state on every rate increase that comes before

1 you when you deal with interim rate increases. It's true.
2 Because the statute was never intended for that purpose. I
3 call upon you to refund every penny, every penny of the interim
4 rates and to refund it now. And with all due respect, it
5 absolutely amazes me that I'm having to sit here right now and
6 waste taxpayer dollars to give the taxpayer back their money,
7 and that staff would come up with the most absurd
8 recommendation that I, the Attorney General, my colleagues and
9 the customers throughout this state are looking at right now,
10 absurd recommendation. To think, to think that an interim rate
11 increase was granted only because the statute allows it to, but
12 then you say no rate increase period, none whatsoever. In
13 fact, you even said that they should get zero; in fact, they
14 should even refund some of the money, which they did. But
15 they -- but then to say today, Aloha, you can keep almost 400
16 plus thousand dollars of the ratepayers' money when no rate
17 increase was granted by you, the courts upheld it, and now
18 they're asking to keep the money that they were never given --
19 should have never gotten to begin with. It's common sense. I
20 would ask you to give back every dime of the Aloha customers'
21 money that is due them and is not due Aloha. I thank you, Mr.
22 Chairman.

23 CHAIRMAN BAEZ: Thank you, Senator Fasano.

24 Commissioners, before we let Senator Fasano go, do
25 you have any questions of the senator? No questions?

1 Commissioner Jaber, are you still there?

2 COMMISSIONER JABER: I sure am. I don't have any
3 questions.

4 CHAIRMAN BAEZ: Great. Thank you.

5 Senator Fasano, thank you for coming and speaking to
6 us today.

7 SENATOR FASANO: Thank you very much.

8 CHAIRMAN BAEZ: All right. Moving, moving along,
9 we're back on the motion to release the escrow funds. And,
10 Mr. Deterding, you can go ahead and --

11 MR. DETERDING: Thank you, Commissioner. First of
12 all, I don't, I don't believe this is the result of any motion
13 by the utility, but I believe that because --

14 CHAIRMAN BAEZ: Did you apply to release the escrow
15 funds or not? I'm sorry. Maybe I'm reading the recommendation
16 wrong.

17 MR. DETERDING: No, no, Mr. Chairman. The way these
18 things normally work is we -- these things are done
19 administratively because the order deals with the issue, but
20 I'll get into that. And I just wanted to make that point,
21 there was no motion by the utility.

22 CHAIRMAN BAEZ: No, I understand. Maybe I misspoke.
23 Your request, I guess.

24 COMMISSIONER JABER: Mr. Chairman, may I ask a
25 clarifying question of you and staff? Is there any

1 disagreement as it relates to Issue 2?

2 CHAIRMAN BAEZ: Did everybody get that?

3 Is there any disagreement over Issue 2?

4 COMMISSIONER JABER: It seems like we can get that
5 one out of the way if the arguments are focused on Issue 3.

6 CHAIRMAN BAEZ: Commissioner Jaber, if you want to
7 make -- Mr. Burgess.

8 MR. BURGESS: I'm sorry. Commissioner, we would like
9 to address that, that issue, if we can.

10 COMMISSIONER JABER: Okay.

11 MR. BURGESS: This is Steve Burgess, Office of Public
12 Counsel.

13 COMMISSIONER DAVIDSON: And I have questions for
14 staff on that. So I've got quite a few on that. I would, I
15 would venture to guess that there is disagreement amongst the
16 parties on that issue.

17 COMMISSIONER JABER: Okay. Thank you.

18 CHAIRMAN BAEZ: All right. We're on Issue 2.

19 COMMISSIONER DAVIDSON: And on that, if I could
20 also -- before you get into your argument, if you could --
21 Mr. Chairman, with your indulgence, three questions for
22 Mr. Deterding that I'll put out there, and perhaps you can
23 address these in your argument.

24 MR. DETERDING: Certainly.

25 COMMISSIONER DAVIDSON: One, just on Issue 2, the

1 amount the utility collected in increased rates, what was that
2 amount?

3 Second question, what was the amount refunded?

4 Third question, if you were claiming that the utility
5 is entitled to retain an amount collected that was above the
6 amount refunded, why? And just put that into your argument
7 wherever it fits.

8 MR. DETERDING: Okay. And I'm going to ask Mr. Nixon
9 to deal with the specifics of the three alternatives after I
10 make my initial presentation. So I think he should be able to
11 address those three. Can you do that, Bob?

12 CHAIRMAN BAEZ: Yeah, Commissioner Bradley.

13 COMMISSIONER BRADLEY: Yes. As it relates to Issue
14 2 -- okay, I'll listen to the explanation before I make my
15 statement.

16 COMMISSIONER DAVIDSON: On this, keep in mind that my
17 questions were limited to just Issue 2 at this point. Issue
18 3 is a separate issue. And there are three alternatives;
19 that's a whole separate set of discussions. But I'm interested
20 in hearing the utility's answer to, to those questions.

21 MR. DETERDING: Well, let's go ahead and do that,
22 then, Commissioner Davidson, and let Mr. Nixon address your,
23 your -- the first two, and it may take both of us to address
24 the final one.

25 MR. NIXON: My name is Robert Nixon, and I'm a CPA

1 and accounting consultant, regulatory consultant for Aloha.

2 The issue of the refund in Issue 2 is really entwined
3 with understanding the alternatives in Issue 3. So maybe to
4 answer your question I've got to go to some of the remarks I
5 had prepared in dealing with the alternatives in Issue 3.

6 CHAIRMAN BAEZ: Mr. Nixon, can I ask you to please
7 speak directly into the microphone? We do have a Commissioner
8 participating by telephone. I'm afraid she might not be able
9 to hear you otherwise.

10 MR. NIXON: Okay. Thank you.

11 First, I think it's important to understand,
12 Commissioner, that it's a false notion that the final rate
13 order did not intend for Aloha to collect any increased
14 revenues between those produced by the interim test year rates
15 and the rates produced by the final test year revenue
16 requirement. We had two different test years that were
17 considered in determining the interim rates and a different
18 test period that was used to determine the final rates with no
19 increase.

20 Now the interim test year ended on June 30th, 2001.
21 The final test year, which the Commission allowed no increase
22 in revenues on, was a test year which ended on December 31st,
23 2001. So you have a six-month time gap, time lag between the
24 interim requirements for interim rates and the final test year
25 for the final rates. And the mathematics of it, just, just the

1 way it works out --

2 COMMISSIONER DAVIDSON: Well, I'm missing, and it may
3 be my density, but I'm missing the relevance of that comment.
4 The Commission has not approved a rate increase for Aloha. I
5 don't understand the relevance of this six-year gap between the
6 interim test year and the final test year as, as a basis for
7 retaining funds that were collected. Help me explain -- help
8 me understand your logic.

9 MR. NIXON: Okay. It's significant, Commissioner,
10 because during that six-month period and without any increase
11 in rates Aloha had customer growth and, to a lesser extent,
12 continuing changes in consumption patterns. So by necessity,
13 by necessity the revenues produced without a rate increase for
14 the final test year would be somewhat higher than the revenues
15 produced by the interim test year. In fact, they were
16 approximately 11 percent higher. That's why you have a
17 4.87 percent refund ordered by the Commission of the interim
18 test year rates collected, and the difference is the amount
19 that was built into these revenue requirement differences,
20 which Aloha retained and should retain.

21 COMMISSIONER BRADLEY: I'd like to ask staff for a
22 response to that. Mr. Chair, are we getting somewhat away from
23 our intended purpose here, and that is to deal with the interim
24 rate case? Are we going back into -- I mean, the interim rate
25 increase. Are we beginning to argue the merits of the initial

1 case?

2 CHAIRMAN BAEZ: Well, it doesn't sound like it to me,
3 Commissioner Bradley, but you may have a point. I think that,
4 I think that Commissioner Davidson's questions have perhaps
5 led, by their own admission led the company to kind of stray
6 into other issues that are dealing with the, with the interim
7 rate increase. But if we can get those out of the way,
8 Commissioner Davidson, if you've gotten some answers to your,
9 to your satisfaction, maybe we can kind of get this back on
10 track, let Mr. Deterding speak up. And then I know Mr. Burgess
11 had said that he wanted to address Issue 2 as well.

12 MR. DETERDING: Well, and, Commissioner, my comments
13 are with regard to all, as I think Mr. Nixon suggested.
14 They're somewhat intertwined. And I have some concerns with
15 the whole process, I guess, too, that I wanted to bring up,
16 which might be the more, the, the bigger part of my
17 presentation. And Mr. Nixon will address each of the
18 alternatives on Issue 3. Again, we can try and address
19 Issue 2 separately, but I'm not sure it's really possible to
20 address it without addressing the underlying issues in Issue
21 3 as well. I do believe your questions will all be answered
22 through our discussion of these things that Mr. Nixon --

23 CHAIRMAN BAEZ: Well, Mr. Deterding, then go ahead,
24 make your, make your comments. And then we can hear from
25 Mr. Burgess, who has some specific points to make as well.

1 MR. DETERDING: Okay. Okay. Thank you,
2 Commissioner.

3 Before I get into the factual matters that
4 demonstrate that the primary and secondary alternate
5 recommendation are contrary to the facts and long-standing
6 commission policy, I'd like to address the issue of the wording
7 of the final order from April of 2002 and the appropriateness
8 of the staff's underlying proposal to issue a new order, much
9 less a PAA order in a case that's been finalized for almost a
10 year now after appeals and from a final order almost two years
11 old.

12 The staff recommendation assumes that a new PAA
13 should be issued in this case. That's clearly not a valid
14 assumption. The final order itself from April of 2002 clearly
15 speaks to the specific issue and -- of interim rates and the
16 appropriate refund. It does not deal only with the refund from
17 the date of the interim order until the date of the final
18 order. It specifically says that the utility should refund
19 4.87 percent of interim rates collected during the interim
20 collection period. That's the term used in the order.

21 It then goes on to define the interim collection
22 period. As the -- from, quote, from November 13th, 2001, to
23 the date Aloha implements the final rates approved in -- final
24 rates approved, end quote. This is on Page 90 and 91 of the
25 final order.

1 Well, what Aloha is proposing and what the first
2 alternate staff recommendation is proposing is that's exactly
3 what Aloha has done. That is what the order requires and that
4 is what Aloha has done. There is no issue that was not
5 addressed by the order. It clearly addressed the issue, the
6 issue that's being discussed here today. So we disagree that
7 this order has not become final, that this order did address
8 this issue of interim rates in totality. And as such, this --
9 under the doctrine of administrative finality and the cases
10 that most of which involve this Commission, that order has
11 passed from the Commission's jurisdiction and authority and, as
12 such, no new order should be issued.

13 Now --

14 CHAIRMAN BAEZ: Hold on, Mr. Deterding.
15 Commissioner Bradley.

16 COMMISSIONER BRADLEY: I need to clear up my earlier
17 statement and question. I thought that we had moved past the
18 interim period and were going to begin a discussion and a
19 determination as to the rate refund issue as it relates to the
20 appeals period or the rates that were, the overearnings
21 possibly that occurred during the -- after the interim period.
22 And it would seem to me that right now we're having a
23 discussion that goes back to the merits of the initial case. I
24 thought that the rates had already been refunded for what was
25 considered as having been overearned during the interim period.

1 And we as a, as a body need to have a discussion and make a
2 determination as to what the, the refund possibly should be for
3 the earnings that were earned after Aloha appealed our initial
4 decision.

5 CHAIRMAN BAEZ: And that's part, that's part of the
6 issues that you're discussing. And I think that some of the --
7 you're right to say that one of the decisions that we're making
8 today is going to define what period we are going to consider
9 or we are considering for refunds. And I'm sure that you'll
10 hear differing opinions as to what exactly is at play. And
11 what I will do at, at some point after we hear from Public
12 Counsel, if we can have staff give some clarification as to
13 what the periods are so, for all our benefits. Will that be
14 all right, Commissioner Bradley?

15 COMMISSIONER BRADLEY: Yes. Yes.

16 CHAIRMAN BAEZ: Thank you. Mr. Deterding.

17 COMMISSIONER DEASON: Mr. Chairman, while -- let me
18 ask a clarifying question.

19 Mr. Deterding, are you making a distinction between
20 the rate case period and the appellate period, or is it your
21 position that the final order addressed the entire period until
22 the final rates were implemented?

23 MR. DETERDING: That is correct, Commissioner.

24 COMMISSIONER DEASON: The latter?

25 MR. DETERDING: The entire period. It clearly

1 referred -- by defining the 4.87 percent as being the refund
2 for the, quote, interim collection period, which is the term
3 utilized in that order on Page 90 and 91, bottom of 90, top of
4 91 at least of my version, and it clearly defines that interim
5 collection period as from November 13th, 2001, which is the
6 date of the final order, I mean, the order on interim rates,
7 granting interim rates, and the date that Aloha implements the
8 rates approved in that order.

9 COMMISSIONER DEASON: And what -- and when that order
10 was issued in November, at what time did it contemplate that
11 final rates would be implemented?

12 MR. DETERDING: I don't know that it did. It just
13 said at the date Aloha implements the final rates.

14 COMMISSIONER DEASON: And this order obviously was
15 issued before the appeal was filed; is that correct?

16 MR. DETERDING: That, that is, that is correct.

17 COMMISSIONER DEASON: And how could the Commission
18 have known there was going to be an appeal and that there would
19 be a stay of the implementation of the final rates?

20 MR. DETERDING: Well, the Commission could not have
21 known there was going to be an appeal. Nobody could have known
22 there was going to be an appeal, Commissioner. But the final
23 order clearly dealt with, as your orders do and have in every
24 other case where there are interim rates, any period during
25 which interim rates are collected, and that's what it says. It

1 says, "the interim collection period," and defines that as
2 going until the final rates are put into effect.

3 The, the absurdity of these, of the second alternate
4 and primary recommendation in my mind is clearly noted by the
5 fact that you have an interim, you have an interim revenue
6 requirement, you have a final revenue requirement. And then
7 what the primary and secondary staff recommendation is saying
8 is, but it's lower during the appeal period. That's
9 nonsensical. That is what -- that is the net effect of what
10 the primary and the secondary staff recommendation are saying.

11 COMMISSIONER DEASON: Can you point to me anywhere in
12 the interim statute where it says that we have the authority to
13 apply -- to make a determination that interim rates are going
14 to apply during the course of an appellate process?

15 MR. DETERDING: Well, that issue was dealt with in
16 the stay, Commissioner, and the --

17 COMMISSIONER DEASON: And the stay is a different
18 order from the one that you quoted that was issued 11/13; is
19 that correct?

20 MR. DETERDING: That is correct. And the only
21 reference in the stay order is to that same 4.87 percent.
22 Nobody suggested there was a different revenue requirement,
23 much less a different refund calculation related to the appeal
24 period. If the parties felt that the order failed to address
25 that issue or that something different had to be done during

1 that period of time, that was their opportunity to do so during
2 the appeal and during the stay issue; either the appeal or
3 during the stay issue.

4 COMMISSIONER BRADLEY: Mr. Chair, a question of
5 Aloha's counsel.

6 MR. DETERDING: Yes, sir.

7 COMMISSIONER BRADLEY: Your last statement is very
8 interesting because it would, it would appear to me that Aloha
9 maybe would have or should have given some consideration to the
10 fact that maybe the appeal would not be -- that the decision
11 would not be in Aloha's favor and that it might go in the other
12 direction.

13 And I guess my question is this: Why would Aloha
14 continue to collect what we consider as being an overearning
15 during that appeals period, knowing that there was a
16 possibility that the appeals court might not rule in Aloha's
17 favor?

18 MR. DETERDING: Well, Commissioner, that's what we
19 were ordered to do. There were only two alternatives available
20 to Aloha after the issuance of the final order: Implement --
21 continue to collect the interim rates, which we specifically
22 asked for the stay related to that issue, and the Commission
23 noted in that stay order that that is in accordance with the
24 Commission's statute on interim rates and on, and on, and on
25 stays in general during appeals. Or the other alternative, if

1 it had not been stayed, would have been to implement the final
2 rates approved in the final order.

3 Last summer the question was raised, and I believe it
4 is the question that is noted as being the formula offered by
5 OPC in the staff recommendation, that the way to judge this is
6 the difference between what was actually collected in the
7 period minus what should have been collected in the same
8 period. Well, I assume "should have been collected," because
9 there's no other logical assumption, means if you had not
10 appealed, if you had implemented the final rates as soon as
11 that order, final order was issued, what would the difference
12 between those two be? Well, that is clearly -- it has been, it
13 has been analyzed like no other refund that I've ever been
14 involved with at this Commission. The Commission staff audited
15 the billing analysis information provided by the utility and
16 nobody has found fault with it, and it showed less than a
17 4.87 percent refund was appropriate if the utility had
18 implemented the final rates at the time of the final order
19 instead of continuing with the interim rates.

20 So the only two alternatives available to the utility
21 during the appeal period as far as what rates to charge both
22 now result in getting back to the revenue requirement from the
23 final order requiring a 4.87 percent refund, which is what
24 Aloha has already done.

25 CHAIRMAN BAEZ: Mr. Deterding.

1 MR. DETERDING: May I continue? Thank you.

2 Nobody -- no party raised the issue of some change in
3 the order or some needed addition to the primary -- needed
4 addition to the order as the primary and second alternate staff
5 recommendation would require in order for you to allow either
6 of those recommendations until that issue was raised last
7 August after the staff had followed the standard procedure and
8 what we believe is the clear wording of the order in suggesting
9 that all money should be released other than the 4.87 percent
10 refund required by the order for the entire period that interim
11 rates were in effect. Even during the discussions of stay and
12 during the appeal no party raised this additional issue or
13 proposed these alternative or unique methodologies for dealing
14 with interim rates. The stay order specifically reiterates, as
15 I noted, Commissioner, the 4.87 percent refund percentage for
16 the entire period. As such, the Commission's order is final,
17 and under the doctrine of administrative finality it cannot be
18 reopened to deal with these unique theories for interim rates
19 or any other matter not dealt with in the order, especially in
20 circumstances such as this where the order specifically deals
21 with the issue at hand.

22 Therefore, based upon the clear wording of that order
23 and long-standing Commission precedent, the Commission must
24 approve the Commission's first alternate recommendation and
25 reject the other two. This is the only way in which the

1 order -- the Commission can comply with the law and its final
2 order.

3 Now contrary to the underlying assumption that this
4 issue was not addressed in that order and, therefore, the
5 Commission may not, may issue another, much less a PAA order,
6 which is subject to yet again another protest, this is outside
7 the PSC's authority, and under the doctrine of administrative
8 finality this case is closed. The issue was covered by the
9 final order.

10 Now even if the issue of administrative finality, the
11 Commission's precedent and the clear wording of the order
12 ignored, there are, there are clear factual, clear facts that
13 demonstrate that the first alternative is the only acceptable
14 alternative recommendation.

15 First of all, the interim test period and the final
16 test period are different years. As Mr. Nixon noted, you can't
17 equate the revenue levels from one to the other and then
18 suggest that any difference is an excess. That's clearly not
19 the case. There is customer growth involved, there is -- there
20 are different expenses recognized in the two periods and which
21 were specifically required and not stayed during the appeal
22 process.

23 Secondly, the original argument from last summer as
24 proposed by Senator Fasano and OPC said the utility was getting
25 a windfall as a result of this unsuccessful appeal. The

1 utility clearly demonstrated through the information supplied
2 last summer to the staff and fully audited that this is not the
3 case. In fact, it showed that no -- if no appeal had been
4 taken and final rates had been implemented right after the
5 issuance of the April 2002 order, those rates would have
6 generated only 4.08 percent less revenue than the interim
7 rates. This demonstrates that there is no windfall and that,
8 in fact, the interim, the 4.87 percent refund ordered was a
9 little too high, not too low.

10 Third, the primary and second alternate
11 recommendation proposed that a smaller revenue requirement and,
12 therefore, a greater refund is appropriate for the period from
13 the final order to the date of the end of the appeals than is
14 appropriate for the -- from the interim order to, to the final
15 order or for the period of time after final rates were
16 implemented. In other words, as I mentioned, the net effect of
17 those two recommendations is here's your revenue requirement
18 for interim, here's your revenue requirement for final, your
19 revenue requirement during the appeal period is down here, and
20 that is, that is a fact.

21 Mr. Nixon is going to give you some specifics on the
22 three alternatives about, about their effect and the underlying
23 logic, and hopefully we won't be redundant to any extent.

24 CHAIRMAN BAEZ: Mr. Deterding, can I ask you and
25 Mr. Nixon to hold off on comments on the different alternatives

1 for the moment so that we can try and get the issue that we are
2 technically on off the board?

3 MR. DETERDING: Okay.

4 CHAIRMAN BAEZ: Okay. Thank you. I want to move to
5 Mr. Burgess now.

6 MR. BURGESS: Thank you, Mr. Chairman. And, yes,
7 with regard to the question initially raised by
8 Commissioner Jaber and then by Commissioner Davidson about
9 Issue 2 and whether there is a difference that distinguishes
10 the two periods, that is the rate case period from the appeal
11 period, yes, there is. And I agree with the staff
12 recommendation that it is something for the Commission to
13 consider, that is that there's an order that deals with the
14 point up through the rate case, and then it is a different
15 situation through the appeal period. However, my reaction to
16 it is, is to question whether the Commission is bound by this
17 if it determines that that, that the 4.87 is an error. And
18 that's what we're arguing, that we think it is an error. That
19 gets into the questions and the other issues, and I'm not going
20 to do that.

21 But if you determine that, what we would say is that
22 the 1996 GTE case then gives you some language wherein you can
23 address an issue, an order that was previously issued that you
24 consider to be an error and correct that. The 1996 GTE case
25 changed the lay of the land significantly on the issue of

1 what's retroactive ratemaking and what the Commission can go
2 back and look at. To what extent does it change it? I'm not
3 real sure, and I don't think most of the practitioners are
4 fully sure until there are more precedent to flesh it out. But
5 at this point I think the GTE case allows you to do what you
6 think is right. And so if you think that the 4.87 is an error,
7 I think the GTE case allows you to do what is right and the
8 courts will decide to what level that, that can be allowed.

9 But just a couple of excerpts from that case, which I
10 know you're very familiar with, but Page 972, the court says,
11 the Supreme Court says, "We view utility ratemaking as a matter
12 of fairness. Equity requires that both ratepayers and
13 utilities be treated in a similar manner."

14 973, "It would be clearly inequitable for either
15 utilities or ratepayers to benefit, thereby receiving a
16 windfall from an erroneous PSC order."

17 And then again it goes on to say they disagree that,
18 that going back and making adjustments would be retroactive
19 ratemaking.

20 Now how that would apply in this case -- you know, I
21 think there are questions that could be raised, there are
22 arguments that could be made. But if the Commission agrees
23 with us that the 4.87 is wrong, then I think the GTE case
24 allows the Commission to correct that order and apply it since
25 it still has these revenues under its jurisdiction.

1 COMMISSIONER JABER: Mr. Chairman, since I posed the
2 initial question, if I could just let you, Public Counsel, and
3 the rest of the Commissioners know where I am at this point. I
4 have a better understanding of the fundamental arguments
5 related to Issue 2. I was coming at it much from the place
6 where Commissioner Bradley articulated, that I had a clear
7 understanding in my mind based on staff's recommendation that
8 there was a rate case period, frankly, just by looking at the
9 language on Issue 2 and that we were more focused on the appeal
10 period. So I tend to agree with how Commissioner Bradley
11 articulated it and wanted very much to just get to the
12 arguments on the appellate period. But recognizing the
13 Commissioners have questions and that this goes to the
14 fundamental argument of the parties, I am very willing to hold
15 off voting on Issue 2 until after we address Issue 3.

16 In the interest of disclosure though, Mr. Burgess,
17 I'm going to tell you I disagree with your argument on
18 Issue 2 only because the interim refund language of the final
19 order was something you could have appealed and brought up to
20 the
21 1st District Court of Appeal and that was not done. So in
22 terms of fundamental fairness, I'm going to disagree with you
23 on Issue 2 because I don't think that this process lends itself
24 to a new opportunity. Issue 3 is a different matter for me.

25 CHAIRMAN BAEZ: Thank you, Commissioner Jaber.

1 And, Commissioner Davidson, you had a question?

2 COMMISSIONER DAVIDSON: Actually, yeah, a response.
3 I will, of course, defer to the Chair as to how we need to
4 proceed on these issues, how you want to proceed on Issue 2 or
5 Issue 3, whatever you deem appropriate. But I have actually
6 two questions -- three questions for Mr. Deterding that I
7 wanted to ask before we moved on to the parties with --

8 CHAIRMAN BAEZ: And let me, let me get one question
9 in and maybe we can clarify. Mr. Burgess, this would be my
10 question. Hearing you -- hearing your argument, you're
11 advancing the position that the, that the 4.87 percent refund
12 number in the final order is somehow under review or could be
13 under review in your opinion; that as a Commission we could ask
14 ourselves the question, was that enough, was that even correct?

15 MR. BURGESS: Yes, Commissioner. The way, the way I
16 would pose it is probably almost the other way around as far as
17 Issue 2 and Issue 3. The first question is do you -- can we
18 convince you that the 4.87 refund is not enough? And, and
19 assuming the answer is yes, that we can, then I would say that
20 you can go back into the rate case period -- if you agree with
21 us, you can go back into the rate case period and adjust it
22 even in that period.

23 CHAIRMAN BAEZ: And that, and that itself is a
24 question for argument under, under Issue 3. Do you in your
25 opinion -- and I guess since Commissioner Jaber expressed how

1 she was coming at this issue, I'll let you know how I read it
2 anyway or how I interpreted it. Irrespective of whether -- how
3 we answer that question of whether you can, we can cross the
4 line back into the interim period or not, which I think is
5 probably more appropriately dealt with under
6 Issue 3 under the different alternatives because they obviously
7 imply an answer one way or the other, whichever you choose,
8 Issue 2 to me was almost as simple as a verification of -- I
9 mean, there is no argument that a 4.87 percent refund was
10 ordered by the final order. No matter, no matter whether you
11 think that issue can be revisited after or not, those are the
12 numbers, and I saw Issue 2 merely as some kind of verification
13 that that number had been met or that that condition had been
14 met.

15 Do you, do you see, do you see it the same way? I
16 mean, and I understand that you've posited that maybe that
17 number wasn't, wasn't correct. But as a, as an administrative
18 matter or as a matter merely of accounting, I mean, would you
19 see Issue 2 that way?

20 MR. BURGESS: I think the answer is, no, I don't.
21 And -- but let me explain, make sure. And let me also address
22 Commissioner Jaber's point, which is a fair point; that is,
23 that we had the opportunity to, to appeal that particular
24 issue. But the point that I would make is that whether we did
25 or not, if the Commission has the authority to change that and

1 has it under its jurisdiction, then the Commission has the
2 obligation to the ratepayers of the state of Florida to make --
3 to correct the decision if it has that authority. So that's
4 where I would come from on that. And that's where I think I
5 disagree with what you were posing, Mr. Chairman, that if it is
6 still an issue that you can adjust and if you think it should
7 be adjusted, then I think it's more than an administrative
8 decision.

9 CHAIRMAN BAEZ: Commissioner Deason.

10 COMMISSIONER DEASON: Well, Mr. Burgess, that begs
11 the question: Is, is this amount still under the Commission's
12 jurisdiction? I'm not talking about for the appellate period.
13 I'm talking about strictly the interim period and I'm talking
14 about the more focused definition of the interim period, that
15 being the period from when interim rates were granted and when
16 the final order became -- was issued.

17 MR. BURGESS: I think, and I don't mean to sound
18 flippant about it, but I think the answer is you can find out.
19 If you think that it was wrong, you can find out by invoking
20 the language of the GTE order and saying we're going to go back
21 and we are going to correct that and we'll find out if the
22 court prohibits that.

23 COMMISSIONER DEASON: But now -- I hate to interrupt,
24 but the GTE order was the result of an appeal, and the court --
25 and it was an issue taken to the court, and the court sided

1 with the, one of the appellants and told the Commission to go
2 back, correct that, and to allow GTE to collect past amounts
3 because of an error in the Commission's order. It did not say
4 that the Commission, you have the authority, once the final
5 order is issued, to go back and reopen that at your discretion.
6 Would you agree with that?

7 MR. BURGESS: Commissioner, I would agree there are
8 factual distinctions between the GTE case and this case. I'm
9 not sure where this case falls though in the court's overall
10 theory, given the language that it used and the theories that
11 it used to tell the Commission that it could go back and, and
12 impose a surcharge for revenues that had already been not
13 allowed to be collected under a previous Commission order. But
14 I would agree there are distinctions.

15 COMMISSIONER DEASON: Mr. Burgess, I must caution, I
16 must caution you, and you're probably more schooled in this
17 than I am, but that if we accept that argument and the facts
18 are reversed in the next case, the company could be in here
19 arguing that, sure, you issued a final order on interim and you
20 said that the amount that was collected was adequate, but we
21 think that that was inadequate. You need to go back and allow
22 us to retroactively surcharge for insufficient interim grant.

23 MR. BURGESS: I understand that, and that's, and
24 that's a fair point.

25 COMMISSIONER DAVIDSON: Chairman.

1 CHAIRMAN BAEZ: Commissioner Davidson.

2 COMMISSIONER DAVIDSON: For Mr. Deterding, what was
3 the total amount of revenue that Aloha collected as a result of
4 the Commission-approved interim rate increase, total amount?

5 MR. DETERDING: Just a moment, Commissioner.

6 CHAIRMAN BAEZ: And while we're waiting, I wanted to
7 ask, Mr. Shreve, do you have a presentation to make? Do you
8 have comments to make? I just want to make sure.

9 MR. SHREVE: Yes.

10 CHAIRMAN BAEZ: Okay. I just wanted to make a mental
11 note to get to you. Thank you.

12 COMMISSIONER DAVIDSON: I'll ask staff the question.
13 What was the total amount of revenue Aloha collected as a
14 result of the Commission-approved interim rate increase?

15 MS. MERCHANT: When you say total, you mean for the,
16 for the whole time?

17 COMMISSIONER DAVIDSON: Total, just the total amount.

18 MS. MERCHANT: Until they implemented the final
19 rates.

20 COMMISSIONER DAVIDSON: I don't even want to think
21 about the periods now. Just the total amount collected.

22 MS. MERCHANT: \$3,132,736.

23 COMMISSIONER DAVIDSON: \$3,132,736. Of that amount,
24 how much has been refunded by Aloha? Without regard to the
25 periods, just flat dollar amount how much has been refunded?

1 MS. MERCHANT: \$153,510.

2 COMMISSIONER DAVIDSON: All right. I'll get back to
3 my third question for --

4 COMMISSIONER BRADLEY: Repeat that again, please.
5 How much has been refunded?

6 CHAIRMAN BAEZ: It was 153 and change. Ms. Merchant,
7 Commissioner Bradley wanted to know a number, please.

8 COMMISSIONER BRADLEY: Repeat that again, please.
9 Give me the figure, the refund figure.

10 MS. MERCHANT: Okay. We've got several different
11 numbers we can give you, but the total revenues collected, that
12 would be the prior rates and the interim rates combined,
13 revenues under both, both of those scenarios would have
14 been \$3,132,736.

15 COMMISSIONER DAVIDSON: My question was just geared
16 toward the, the amount collected but for the interim rate
17 increase.

18 MS. MERCHANT: Okay.

19 COMMISSIONER DAVIDSON: Just that amount.

20 MS. MERCHANT: The amount for the interim, the total
21 revenues collected under interim rates?

22 COMMISSIONER DAVIDSON: Yes.

23 MS. MERCHANT: Okay. That is, that is \$499,671.

24 MR. DETERDING: Commissioner, if I may, that's the
25 increase under interim for the -- increased revenues under

1 interim versus original rate, I believe.

2 COMMISSIONER DAVIDSON: So for staff, \$499,671 is the
3 total amount of revenue collected pursuant to the interim rate
4 increase. That amount is attributable just to the rate
5 increase.

6 MS. MERCHANT: Correct.

7 COMMISSIONER DAVIDSON: And of that amount,
8 \$153,510 has been refunded.

9 MS. MERCHANT: Correct.

10 COMMISSIONER DAVIDSON: That leaves a balance of how
11 much?

12 MS. MERCHANT: \$346,161.

13 COMMISSIONER DAVIDSON: Shouldn't that whole amount
14 be refunded?

15 MS. MERCHANT: That's what's at issue here today.

16 COMMISSIONER DAVIDSON: Well, let me, let me turn to
17 Mr. Deterding now just on a, a legal public policy issue. If
18 the Commission made a material mistake in a prior order,
19 doesn't it have both the jurisdiction and the public obligation
20 to correct that mistake just as a general principle of law?
21 Shouldn't we get at the right result in every case? And I'm
22 not saying that this is the wrong result. I'm trying to just
23 get your, your view on a general principle of, of public
24 administration and of law.

25 So as a general matter, if the Commission made a

1 material mistake in a prior order, would you agree that it has
2 both the jurisdiction and the public obligation to correct that
3 mistake? First give me a yes or a no and then give me your
4 reasoning.

5 MR. DETERDING: Well, Commissioner --

6 COMMISSIONER DAVIDSON: Yes or a no and then your
7 reasoning.

8 MR. DETERDING: I'm not sure I can give you a yes or
9 no. There is a line of cases on the issue of administrative
10 finality.

11 Yes, the Commission is supposed to be able to correct
12 errors in its order and to reach the fair and appropriate
13 result by those corrections. However, there are issues of, of
14 time, there are issues that have been addressed in a, a whole
15 litany of cases on the question of administrative finality that
16 would put limits on that, on the Commission's ability to do so.

17 COMMISSIONER DAVIDSON: Thank you.

18 COMMISSIONER BRADLEY: Question.

19 CHAIRMAN BAEZ: Commissioner Bradley.

20 COMMISSIONER BRADLEY: And I don't know if this is
21 for staff or for -- yeah, for staff.

22 What, what would staff -- what would the amount be as
23 it -- okay.

24 If we had to make a determination, determination as
25 to the, the cost of administration in order to collect

1 the \$499,671 rate increase, what would staff allocate to Aloha
2 as, as administrative costs in order to collect this?

3 MS. MERCHANT: The final order, I believe, I don't
4 have it in front of me right now, but the final order addresses
5 that administrative costs associated with refunds are the
6 responsibility of the utility and not passed on to the
7 ratepayers.

8 COMMISSIONER BRADLEY: Okay.

9 MS. MERCHANT: But generally speaking, I wouldn't
10 think that they would be very material. They have to account
11 for the money that they deposited, they have to put it in an
12 escrow account in this case, send in reports, monthly reports.
13 So in that regard it's not an extreme amount of money.

14 COMMISSIONER BRADLEY: Aloha, administrative costs.

15 MR. DETERDING: I believe that's -- what the staff,
16 Ms. Merchant said is accurate. The order specifically deals
17 with the issue of administrative costs and making the refunds
18 and so forth, and, as is the norm, in the Commission's order on
19 these things it says that those are the responsibility of the
20 utility.

21 COMMISSIONER BRADLEY: Can you, can you give me a
22 number?

23 MR. DETERDING: Can I give you a number? No, sir, I
24 don't believe we kept any specific numbers segregating out
25 expenses related to the administration of the refund.

1 Certainly normally we don't go through all of this. The monies
2 are released from escrow in accordance with the order when it
3 becomes final and we don't have to go through additional
4 hearings.

5 COMMISSIONER BRADLEY: Okay. Now what I was -- what
6 I'm interested in was not only the administration of the
7 refund, but the collection of the interim rate increase and the
8 administrative costs of both.

9 MR. DETERDING: And I don't think we keep separate
10 records showing which expenses are related to that. There's no
11 point in doing so, given the Commission's history of not
12 recognizing those costs.

13 CHAIRMAN BAEZ: Done, Commissioner Bradley?

14 COMMISSIONER BRADLEY: Uh-huh.

15 CHAIRMAN BAEZ: Commissioners, I'd like to try and
16 refocus, and I think we heard some comments from Commissioner
17 Jaber, and certainly based on Mr. Burgess's comments, he still
18 maintains that Issue 2 is, somehow falls out if we -- or blends
19 into Issue 3. So what I'd like to get is everybody's -- either
20 get an understanding from, from the Commissioners that we have
21 somehow moved, moved on or we're going to revisit Issue 2 based
22 on our decision in Issue 3, if that's convenient for everyone,
23 get some kind of consensus on that.

24 COMMISSIONER JABER: That's fine with me.

25 CHAIRMAN BAEZ: Commissioner Jaber, are you all

1 right?

2 COMMISSIONER JABER: Yeah. Whatever your pleasure
3 is. I am completely comfortable with moving on to 3 and coming
4 back to 2.

5 CHAIRMAN BAEZ: It seems to me that that's probably
6 still an open question based on Mr. Burgess's arguments. And I
7 would, and I would imagine that somehow the decision in
8 Issue 3 would have impacted it anyhow, so I want to try and
9 reserve some time to try and straighten it out at the end so
10 that we can get to the meat of the item. In the meantime,
11 Mr. Shreve, you haven't been heard from, and we'd like to get
12 you started and taken care of.

13 MR. SHREVE: Thank you, Mr. Chairman. I will be very
14 brief.

15 Of course, it seems to me there can be very little
16 argument that the entire interim should be refunded if there
17 was no rate increase. The reason you give the interim increase
18 is to cover the company during the pendency of the case.
19 Granted, there's a different argument on the first four months
20 here than there is on the second, but overall the logic would
21 say that everything should go back.

22 If you had a case where you gave an interim increase
23 and then there was a rate decrease, you would not refund any
24 more than the interim increase that was collected from the
25 company because that's all within the jurisdiction there.

1 There would have had to have been an amount set subject to an
2 interim rate decrease in order to do that, and that's where the
3 Public Counsel would have come in and asked for that decrease
4 to be set. Then you would be able to make a refund because
5 there was a rate decrease.

6 All I'm saying is, here, if you come in, you have the
7 set of rates, you ask for an interim rate increase, you get
8 that and you come out with no increase, then the company should
9 not be entitled to any of that interim increase that has been
10 collected. Here again, there are two different arguments to be
11 made here. I think you have the ability to go back and correct
12 your mistake. Perhaps the Public Counsel should have appealed
13 something else or taken up something else. But if the
14 Commission made a mistake, you have an obligation to correct it
15 on behalf of the people.

16 If you recall, and Commissioner Deason will recall
17 this, years before the '96 GTE case there was also a GTE case
18 that had administrative finality that had been in effect for
19 two years, the order had, and everything was totally over. The
20 Commission came back and reconsidered it on their own motion,
21 as you have always had the ability to do, to correct a
22 situation that you thought had been an error two years before,
23 at least changed their mind. So I think you do have an
24 obligation to correct that. I think it's very clear that if
25 you put an interim rate increase in and there is no rate

1 increase, you have an obligation to return that money to the
2 customers. Thank you.

3 CHAIRMAN BAEZ: Thank you, Mr. Shreve. And,
4 Mr. Deterding, I know that I cut Mr. Nixon off. He wanted to
5 point up some numbers, and you can have that opportunity now
6 because I think we're, we're on the various recommendations on
7 Issue 3.

8 MR. DETERDING: Yes. Commissioner, Mr. Nixon wants
9 to provide you with basically a discussion of each of the
10 alternatives under Issue 3 and why the issue -- first
11 alternative staff recommendation is the only one that makes
12 sense from, from a precedential standpoint and from the
13 standpoint of what the order requires.

14 MR. NIXON: Commissioners, I don't think I really did
15 my job because you don't understand the difference between the
16 two different test years, this business.

17 COMMISSIONER BRADLEY: Oh, yes, we do.

18 MR. NIXON: But, Commissioner Davidson, this goes
19 directly to answering your question of why not all the revenues
20 were refunded during the rate case period.

21 COMMISSIONER DAVIDSON: I would disagree with the
22 characterization that we don't understand. I may not buy your
23 story, but I understand.

24 COMMISSIONER BRADLEY: I would, I would concur with
25 that. Oh, we understand very clearly what the difference is,

1 what the differences are.

2 MR. NIXON: Okay. I --

3 COMMISSIONER BRADLEY: So we're not in the dark.

4 MR. NIXON: Then I just haven't done my job.

5 But I believe what -- that the final order recognized
6 that without any increase for the final test year period, those
7 revenues, by necessity, were about 11 percent higher.

8 I want to move on to the question of whether Aloha
9 has received a windfall. Aloha followed that formula that is
10 set forth on Pages 9 and 10 of the recommendation to determine
11 whether any windfall had occurred. As a result of a meeting
12 with staff, which was attended by Mr. Burgess in early August,
13 we talked about what Aloha had to do to prove that they had not
14 received a windfall, and we produced a billing analysis and a
15 schedule which summarized the revenues that were actually
16 collected during that 15-month, what you're calling the appeal
17 period, with the revenue that should have been collected under
18 the final rates during that same 15-month period. This
19 involved quite a bit of work because Aloha went back and
20 actually recalculated every single customer's bills under
21 interim rates and under the final rates to make this
22 comparison. Then the Commission came in and audited that
23 information, both with an on-site field auditor, and Aloha
24 provided its entire billing program electronically to your EDP
25 staff here in Tallahassee. And they audited that information

1 electronically and came up with the same numbers that Aloha had
2 presented on the schedule. So we were in agreement, and I
3 think that's mentioned someplace in this order.

4 That comparison showed that the refund percentage of
5 4.87 percent, which is in the final order, remained materially
6 the same throughout the refund period over the 15 months, and
7 mathematically it has to because of the differences in the two
8 test years which I mentioned before. It's built into the rates
9 and the differences in the revenue requirements for the interim
10 test year and the final test year, which lagged by six months
11 the test year used to set final rates.

12 Finally, I think Alternative Two is somewhat
13 contradictory. On Page 18 the staff, I think, is supporting
14 that alternative, seem to agree that the final order allowed
15 Aloha to keep 11.08 percent of the interim revenue during the
16 rate case period. But nothing changes that relationship,
17 Commissioners. During the appeal period, now or into the
18 future, the fact is Aloha is going to continue to collect
19 revenues which are about 11 percent higher than the revenues
20 which were set during the rate case period under interim rates.
21 It's just mathematically built into the numbers.

22 If I could put it another way, if Aloha had actually
23 implemented the final rates on April 30th, if we had chosen not
24 to appeal this case and implemented those rates on April 30th,
25 that 11.08 percent would have been retained by Aloha and we

1 would not be sitting here today discussing this issue.

2 I want to move and make a couple of comments about
3 the primary staff recommendation.

4 COMMISSIONER DEASON: Mr. Nixon, let me ask a
5 question, and you may need to refer to Mr. Deterding. But by
6 choosing to appeal the case, did you subject yourself to the
7 risk that the entire collection of the interim may be subject
8 to refund? That was your choice, you recognized it was your
9 choice, you appealed. By appealing it, did you subject
10 yourself to that risk?

11 MR. DETERDING: Commissioners, I would say we did in
12 that if the order had been changed with regard to either the
13 refund percentage or as to the revenue requirement, then, yes,
14 that was a possibility. But neither one of those things were
15 done.

16 COMMISSIONER DEASON: So you're saying that if the
17 final -- as a result of the appeal, if the final rate order had
18 been changed to some extent, then you were subjecting yourself
19 to that risk?

20 MR. DETERDING: I believe that is correct. If, for
21 instance, somebody had cross appealed or had separately
22 appealed and said, no, the revenue requirement should be lower
23 than the order and the court approved that lower revenue
24 requirement, then, yes, a greater percentage of the interim
25 would be refundable, perhaps all.

1 The same is true as if they had -- if somebody had
2 appealed the issue of the, the order's finding as to the
3 appropriate refund percentage or methodology or calculation
4 methodology, then that is conceivable that the interim would
5 have, the amount of interim refundable would have changed.
6 So -- but that was, that was not the case.

7 COMMISSIONER JABER: Mr. Deterding, one of the
8 things -- Mr. Chairman, if I may. One of the things I don't
9 understand about your argument, maybe this is a good time for
10 you to address it, is the final order is clear that you were
11 not, you did not meet your burden of proof in justifying an
12 increase. To accept your argument has the perverse effect of
13 circumventing our decision by your opportunity to appeal. In
14 other words, the court upheld our order in its entirety. To
15 allow you to keep -- and I do see the distinction, Mr. Nixon,
16 between the rate case period when we issued a final order and
17 the time period the appeal was pending. I'm focused on the
18 time period the appeal was pending. To not require you to
19 refund that amount has the perverse effect of circumventing the
20 underlying decision of our order and what the court upheld.
21 You have not addressed that, you don't cite any law as it
22 relates to that, and I just, I don't understand your argument
23 as it relates to a legal philosophy.

24 MR. DETERDING: Well, Commissioner Jaber, first of
25 all, as I noted, I believe that the order addresses that issue

1 and addresses it in a way that covers the appeal period, too.

2 But even setting that aside --

3 COMMISSIONER JABER: Can you cite me anyplace in that
4 final order where we mention the word "appeal" or the
5 possibility of appeal or what the interim rate should be during
6 an appeal or what a refund should be if you would have won on
7 appeal or if you would have lost on appeal? I've read that
8 order from front to back and I don't see it. Can you point me
9 to someplace?

10 MR. DETERDING: No, Commissioner, other than the
11 standard wording in the back of the order that recognized the
12 possibility of appeal that is in every one of your final
13 orders. You are correct; it does not talk about a separate
14 calculation of refund during the appeal period. But certainly
15 to the extent that anybody felt that there was a different
16 calculation, which I've never seen in any other case before
17 this Commission until this one, if someone felt that it was
18 appropriate to deal with the refund in a different way, then
19 that should have and could have been raised on reconsideration,
20 on appeal or during the stay process at which it was reiterated
21 until last July that 4.87 percent of the, of the revenues
22 collected during the interim period was the appropriate refund
23 percent.

24 COMMISSIONER JABER: And, Mr. Deterding, as one
25 decision maker on the case, I have to tell you I thought, as

1 Senator Fasano said, it's a matter of common sense and logic.
2 This was a case where it was either going to be up or down. We
3 denied your rate increase in its entirety based on a burden of
4 proof issue. It never would have occurred to me as the
5 decision-maker that we would be arguing with you about an
6 appropriate refund since the court either would overturn us and
7 remand for additional proceeding or, frankly, uphold us in the
8 entirety, and that's precisely what they did. So I guess I
9 continue to look at it as an all or nothing as it relates to
10 the appeals period.

11 MR. DETERDING: Well, and again, Commissioners, the
12 only way that, that I can explain that is that you're dealing
13 with an interim test period that has a different revenue
14 requirement than the final test period. And when you take the
15 interim -- when you take the final test period revenue
16 requirement and compare it to those that were collected under
17 interim rates, the appropriate refund is 4.87 percent. When
18 you compare your revenue requirements during the interim
19 period, the initial interim period between the date of the
20 interim order and the date of the final order and the, and the
21 period after the final order and after the appeal that are the
22 rates now in effect, and the net effect of the proposal by
23 Senator Fasano and OPC is that you would have a different
24 revenue requirement, a lower revenue requirement during the
25 appeal period. And even the underlying logic of there being no

1 increase certainly does not suggest that you have yet a lower
2 revenue requirement during the appeal period.

3 COMMISSIONER JABER: Okay. Mr. Chairman, I want to
4 follow up on that point with staff at the appropriate time when
5 all the presentations are made. Thank you.

6 CHAIRMAN BAEZ: All right, Commissioner Jaber.

7 Commissioners, I think all the presentations are made
8 at this point. Mr. Shreve, do you have --

9 MR. SHREVE: Just a brief comment on 3. Where this
10 would have a statewide application is in every rate increase
11 case you have that you're going to provide or grant an interim
12 rate increase. I think the staff and the Commissioners are
13 going to have to change their explanation to the customers and
14 say, not as we've always said in the past, this increase is
15 protected because we're going to do a good, strong, thorough
16 job during the case, this is quick and dirty. But you're going
17 to have to explain that although you give them a rate increase,
18 the company may be entitled to keep a part of that even without
19 an increase or they may be able to keep a part of that even
20 with a decrease. So you're going to have to change your
21 explanations because they'll no longer be explained to the
22 customers that you're going to have that interim rate increase
23 protected if there is no rate increase. Thank you.

24 CHAIRMAN BAEZ: Thank you, Mr. Shreve.

25 Senator Fasano, you had lined up -- okay. Mr.

1 Burgess.

2 MR. BURGESS: Commissioner, I had tried to restrict
3 my comments to Issue 2 before. I have a couple of brief points
4 I would like to make with regard to Issue 3, if I may. Is this
5 the appropriate time?

6 CHAIRMAN BAEZ: This is the appropriate time, but
7 hold on just a second. Mr. Deterding.

8 MR. DETERDING: I apologize. Mr. Nixon had not
9 finished his remarks. He had a little bit more on the primary
10 staff recommendation and was --

11 CHAIRMAN BAEZ: And I apologize. Mr. Nixon, please
12 continue and be in wrap-up mode so we can get on to some
13 discussion. I'm sure you'll have plenty of questions to get
14 whatever you missed in.

15 MR. NIXON: I'll be in wrap-up mode.

16 Commissioners, I believe the primary staff
17 recommendation does break some new ground. This is the first
18 water and sewer case I'm familiar with that does an evaluation
19 of earnings using a new test year beyond the final test year in
20 a final order which was reviewed by an appellate court. I
21 think -- if you choose to go this way, I think that the, the
22 calculated so-called excess revenue fails to take into account
23 the significant expenses Aloha is spending on its water
24 conservation program, which were approved by the Commission in
25 the final order and they were embedded in the final revenues

1 contained in that order.

2 What staff has done is calculate a revenue excess for
3 2002, and then they've annualized that for a period of
4 15 months on Page 15. They've annualized 2002 revenue going
5 seven months into 2003, totally ignoring the large sums of
6 money Aloha is spending on its water conservation program.

7 This is totally unfair. Currently Aloha is spending
8 more than \$125,000 a year on water conservation programs. And
9 to totally ignore those expenditures in the calculation on
10 Page 12, that is retroactive ratemaking.

11 And in conclusion, I would just say I believe that
12 the Alternative One recommendation best fits the facts and the
13 circumstances for disposition of these funds in escrow and it
14 reflects long-standing Commission policy, and I urge you to
15 adopt that one.

16 CHAIRMAN BAEZ: Thank you, Mr. Nixon.

17 Mr. Burgess, briefly.

18 MR. BURGESS: Thank you, Mr. Chairman, briefly.

19 There are -- the central issue is by how much is the
20 15.5 percent excessive and therefore need to be refunded? It
21 has been obscured somewhat by two factors specific to this
22 case. One is the change in the rate design. But the rate
23 design was intended to be entirely revenue neutral, so any
24 adjustments that result from looking at revenue associated with
25 the new rate design is really not something to be taken into

1 account as, as to determining by how much the 15.95 is
2 excessive.

3 The other point is one that I agree with Mr. Nixon
4 on, there are two different test years, except I've reached
5 entirely the opposite conclusion. The interim rates, the
6 15.95 percent was determined using an earlier test year than
7 was used for the permanent rate case. Therefore, all the
8 growth associated with moving forward in time, all the growth
9 and inflation have gone into a calculation of revenue
10 requirement for the later period. If you subtract a later
11 period from the earlier period, all of that growth goes to
12 reducing the amount of refund that is properly attributable and
13 should be, and should be refunded back to the customers, and
14 that's where the two different test periods work out. That
15 is -- it is wrong to use two different test periods. The
16 calculation of revenue requirements for the test period is
17 fine. And if you tested revenue requirement against revenue
18 requirement, that would be one thing, but it has to be for the
19 same test year. The fact that you've moved forward in time has
20 taken that 11 percent, the growth that Mr. Nixon identified,
21 and has removed it from the properly calculable refund that's
22 due to the customers.

23 CHAIRMAN BAEZ: Thank you, Mr. Burgess.

24 Senator Fasano.

25 SENATOR FASANO: Thank you, Mr. Chairman. I'll be

1 brief.

2 Again, I look at the statute here where it says the
3 regulation of utilities is declared to be in the public
4 interest. If a mistake was made, we all make mistakes. We do
5 in the Legislature all the time. We always have to go back and
6 we deal with it with what we call a "glitch bill" because of
7 the mistakes we've made in the past.

8 And in this case the mistake was made that in the
9 final order it didn't say that all the money should be given
10 back to the people. That doesn't mean we should just ignore
11 that. Remember, you're here in the public interest: What's
12 best for the public and what's best for the ratepayer if they
13 shouldn't have paid those dollars. Those dollars were paid
14 because they were granted an interim rate increase, which they
15 then were told you're not getting any rate increase at all. So
16 isn't it logic that then those people who paid that interim
17 rate increase should get the money back? I mean, to me that's
18 just pure logic.

19 Now if you agree with staff's recommendation and the
20 ratepayers do not get their money back and Aloha gets to keep
21 the money that they were not granted to begin with, then you
22 set precedent in my opinion. And what you're probably going to
23 have to do in the future is probably not allow interim rate
24 increases when you think about it. Because if you do, then the
25 utility company will be able to keep those interim rate

1 increases regardless of the final order.

2 I would just ask you once again to just look at the
3 logic here. I'm not an attorney, so what I hear from both
4 sides is very eloquent and interesting. But I'm here because
5 I'm an Aloha Utility customer. Not only am I an Aloha Utility
6 customer, but I'm also a state senator who represents about
7 15,000 people in that area that were ecstatic on the day you
8 announced that Aloha would not get one penny of an increase,
9 ecstatic. And now they're saddened to find out that there's a
10 chance that they won't even get the money back that they paid
11 Aloha in the interim.

12 How do you go -- how do I go back home and explain
13 that to the ratepayers? They'll look at me and shake their
14 head and say, but, Mike, that's not right, that's not fair,
15 that's not in the public interest. We paid an interim rate
16 increase. At the end Aloha was told you're going to get no
17 increase, not even the 15-plus percent, and we don't get those
18 dollars back? I mean, yeah, it's 300 and some odd thousand
19 dollars. That's a lot of money to the people back home. And I
20 know it's probably costing a few dollars here to have to deal
21 with this issue, and it's sad that we're here today to have to
22 deal with it because the people just want back what they gave
23 to Aloha that Aloha shouldn't be getting.

24 And, I mean, you -- each and every one of you know --
25 and I think Commissioner Davidson asked the perfect question,

1 what was collected and why aren't we giving it back to the
2 people since Aloha was not granted any rate increase? You know
3 the problems we've had with Aloha Utilities, you know that,
4 that over the last umpteen years the problems we've had with
5 them. In fact, they were supposed to do something in the past
6 that they didn't do, and that was to collect money for impact
7 fees, higher impact fees that they didn't collect. You let
8 them get away with that.

9 Commissioners, just do the logical thing right here.
10 Give the people back their money that they paid to Aloha that
11 you did not grant Aloha any rate increase. Bottom line. Thank
12 you.

13 CHAIRMAN BAEZ: Thank you, Senator.

14 And with that, Commissioner Jaber, you had questions
15 that you wanted to address to staff or have staff address that
16 you had already asked?

17 COMMISSIONER JABER: Thank you, Mr. Chairman. No.
18 There are questions I haven't posed yet to staff.

19 One is to our legal staff, and I don't know who's
20 there to support the Alternative Two.

21 CHAIRMAN BAEZ: You have a phalanx of lawyers here.

22 COMMISSIONER JABER: Well, okay. Who wants to take
23 on a question related to Alternative Two specifically about the
24 concern related to change in policy and --

25 MS. HELTON: Commissioner Jaber, this is

1 Mary Anne Helton. I think it should be addressed to me.

2 COMMISSIONER JABER: Okay. Great. You raised the
3 concern that we may need to address a change in policy if we do
4 something different than, I guess the way I took it,
5 Alternative Two. And, Mary Anne, maybe I'm reading this
6 literally, but I don't think we have even a policy. It seems,
7 it seems to me from a legal standpoint if our order was
8 completely upheld on appeal, that to take that to a legal -- to
9 be consistent in terms of what we did legally, then no increase
10 would be entitled at all, and to do anything different has the
11 perverse effect of allowing the company to keep some sort of
12 increase that the court said we were in the right in denying.

13 MS. HELTON: I don't disagree with that,
14 Commissioner Jaber. That paragraph -- and I think you're
15 talking about the paragraph on Page 18.

16 COMMISSIONER JABER: Okay. I guess what concerned me
17 is the notion of elevating this to a change in policy. I
18 don't, I don't see it as a change in policy. I see it being
19 consistent with our past practice. What makes this case unique
20 perhaps is that we denied the rate increase in its entirety.

21 MS. HELTON: Exactly.

22 COMMISSIONER JABER: All right. I just didn't want
23 to open up a Pandora's box comparing this to Florida cities and
24 sort of articulating that this would be a change in policy or
25 practice when I don't, I don't think it is.

1 MS. HELTON: I think that paragraph is superfluous,
2 and I think in hindsight it perhaps didn't even need to be
3 included in the recommendation.

4 COMMISSIONER JABER: Okay. And then subsequently not
5 included in the order?

6 MS. HELTON: If the Commission goes with that
7 alternative, yes, ma'am.

8 COMMISSIONER JABER: Okay. With regard to the
9 concern raised on the water conservation program, the final
10 order speaks to the water conservation program, doesn't it?

11 MS. MERCHANT: Yes, it does. This is Tricia
12 Merchant.

13 COMMISSIONER JABER: On Page 80 we say, "Adding a
14 water auditor to develop the program should be adequate to get
15 the programs off the ground. If the programs prove successful
16 and have a high penetration rate, then we can reconsider
17 approving the expense for a second position at a later date in
18 another proceeding."

19 So, Trish, as it relates to Mr. Nixon's point, are we
20 precluding revisiting the conservation program and allowing
21 expenses associated with that?

22 MS. MERCHANT: I'm not sure if I understood your
23 question completely.

24 COMMISSIONER JABER: Mr. Nixon makes the point that
25 they are spending, Aloha is spending \$125,000 a year, I think

1 he said, as it relates to conservation expenses and that
2 Alternative Two doesn't take that point in consideration. And
3 my question is, consistent with the final order, I don't
4 believe we are precluding consideration in the future of those
5 conservation expenses. Would you agree with that?

6 MS. MERCHANT: That's correct. We, we, we would
7 intend on the company to spend that money in the future if they
8 hadn't already spent it.

9 COMMISSIONER JABER: And would be entitled to make
10 some sort of showing that those expenses were prudently
11 incurred and should be collected in the future, recovered in
12 the future?

13 MS. MERCHANT: Yes.

14 COMMISSIONER JABER: Okay. Mr. Chairman, those are
15 the only questions I have right now.

16 CHAIRMAN BAEZ: Thank you, Commissioner.

17 Commissioners, any other questions? No other
18 questions. We can, we can entertain a motion at this point.

19 COMMISSIONER JABER: Mr. Chairman, let me throw
20 something out, not a motion but just to gauge where everybody
21 might be. I would be willing to make a motion to approve
22 Alternative Two, but approve staff's recommendation on Issue 2.
23 Again, that's not a motion because I don't want to take away
24 discussion from the Commissioners, but that's -- if I had to,
25 it would be to accept Alternative Two, but also accept staff's

1 recommendation on Issue 2.

2 CHAIRMAN BAEZ: Thank you for your input,
3 Commissioner.

4 Commissioner Davidson.

5 COMMISSIONER DAVIDSON: Thank you, Chairman. I'm in
6 a bit of a different spot, just to let the folks know where I
7 am. I'm guided by two basic facts and three core principles.

8 Fact one, the Commission did not approve a final rate
9 increase and found no such increase was proper.

10 Guiding principle one, if we put an interim rate
11 increase in effect and there is no final rate increase, I
12 believe we have an obligation to order for the benefit of the
13 public a refund of all such amounts collected.

14 Principle two, if the Commission made a mistake in a
15 prior order, I believe we have the inherent authority and the
16 public obligation to correct that mistake.

17 Principle three, I don't believe that we should use
18 the interim rate revenues as some type of vehicle for
19 addressing other expenditures such as conservation expenses.
20 This is not at all to say that a company is not entitled to a
21 consideration of those, of those issues, but it shouldn't be
22 done through commingling interim rate increases with those
23 types of expenses.

24 Fact number two, the difference between the total
25 amount of revenue collected as a result of the

1 Commission-approved interim rate increase and the amount
2 refunded is 346 thousand dollars one hundred -- \$346,161. That
3 is the amount I would like to see refunded to the customers
4 however way we get there in a legally defensible order. So
5 those are the two facts and the three principles by which I'll
6 make my decision.

7 CHAIRMAN BAEZ: I have a quick question of staff.
8 You heard Commissioner Jaber suggest that the, the, I guess
9 it's \$31,000 or whatever the number is in Issue 2 be respected.
10 Does that jibe with Alternative Two? I guess that's my
11 question.

12 MS. MERCHANT: I believe that was, that was the
13 primary staff.

14 CHAIRMAN BAEZ: I'm sorry?

15 MR. JAEGER: Chairman --

16 CHAIRMAN BAEZ: No. On Issue -- I'm asking about
17 Issue 2 identifies a number that, that staff in its entirety
18 has recommended, I don't think there's an alternative there,
19 that they have recommended be recognized as the appropriate
20 according to the final order, et cetera.

21 MS. MERCHANT: I misspoke. I was talking -- I was on
22 the wrong point.

23 CHAIRMAN BAEZ: And yet what is your answer on this
24 one?

25 MS. MERCHANT: All staff does agree, is in agreement

1 with our recommendation on Issue 2.

2 CHAIRMAN BAEZ: Okay. And the number, the dollar
3 amount that's identified for acknowledgment as appropriate in
4 Issue 2, does that correspond -- I guess is that affected in
5 any way if the Commission were to adopt the second alternative
6 recommendation, or does the second alternative recommendation
7 actually recognize that those, that those funds have been paid?

8 COMMISSIONER JABER: Chairman Baez, that's a great
9 question, and I appreciate your asking it. Let me clarify for
10 staff; maybe it'll help them answer the question.

11 The reason I can, I can reconcile them in my mind is
12 I'm coming at Issue 2 purely from that January 1st, 2002,
13 through April 30th, 2002, period, which is when the company
14 began collecting interim rates, Trish, and the date of our
15 final order versus what staff proposes in Alternative Two being
16 the appellate period. Now that's how I reconcile it in my
17 mind. But if they are not reconcilable, then Chairman Baez
18 asked a great question and you need to straighten me out.

19 CHAIRMAN BAEZ: And can you clear it up for me? I
20 want to know how the numbers fall out because --

21 MS. MERCHANT: Alternative Two deals with the
22 appellate period. Staff's recommendation in Issue 2 is for
23 the, what we call the rate case period.

24 CHAIRMAN BAEZ: Correct. So there is no overlap. I
25 guess I just wanted to be clear.

1 MS. MERCHANT: That's correct. Commissioner
2 Davidson's position would be all encompassing, all encompassing
3 of --

4 CHAIRMAN BAEZ: But Commissioner Davidson's -- and
5 I'm not trying to put words in your mouth. I guess is it -- is
6 there something about his position? Because I heard a lot, I
7 heard a lot of similarities. You know, he --

8 COMMISSIONER DAVIDSON: Well, you asked a question
9 earlier that was consistent, I think. I mean, your question
10 about what was done with Issue -- I interpreted one earlier
11 question you asked as does, does approving staff on -- would
12 approving staff on Issue 2 preclude us from still ordering a
13 full refund of the difference between what was collected and
14 what was refunded? I don't know if that was a fair
15 implication, but --

16 CHAIRMAN BAEZ: It sounds fair to me to the extent
17 that my understanding of that second alternative is, in fact, a
18 full refund. I mean, it --

19 MS. MERCHANT: No. The -- Issue 2 is only for the
20 first part that -- okay?

21 CHAIRMAN BAEZ: Yes, I understand.

22 MS. MERCHANT: The second alternative on Issue 3 is
23 only for the appellate period. It's all of the interim rate
24 increase for the appellate period, not all of the interim
25 increase that was collected. Does that, does that -- am I --

1 CHAIRMAN BAEZ: Okay. I understand now, Trish. And
2 I guess -- and perhaps that's not consistent with what --
3 Commissioner Davidson perhaps is going a little bit further
4 than whatever is available on paper here. Is that, is that
5 fair?

6 MS. MERCHANT: So if we were to go with Commissioner
7 Davidson's recommendation, it would be -- you would have to
8 deny staff on Issue 2 and you would have to change the vote on
9 Issue 2.

10 CHAIRMAN BAEZ: And there, and there would be
11 something -- okay. That's what I wanted to clear up.

12 MS. MERCHANT: And then go with the second
13 alternative on Issue 3.

14 CHAIRMAN BAEZ: That's what I wanted to clear up.
15 Commissioners, any other questions or comments at
16 this point?

17 COMMISSIONER DEASON: I have some questions, but I
18 can defer to Commissioner Bradley. You want me to go ahead?
19 Okay.

20 First of all, let me just preface the question by
21 saying that I see a distinction between the, what I would refer
22 to as the rate case period and what I would refer to as the
23 appellate period.

24 For the rate case period -- this case, first of all,
25 this case was first assigned to a panel of Commissioners, which

1 I fortunately was not on. In retrospect I can say I
2 fortunately was not on that panel. That panel of Commissioners
3 made a decision, and that decision was, as the order states,
4 and I'm to some extent paraphrasing, but there was no rate
5 increase. However, there was, it was ordered that only a
6 portion of the interim revenues collected would be refunded.
7 That was not appealed, but -- and then the -- but the court
8 affirmed that order in all respects, and that order stated that
9 there was going to be a certain amount of the interim
10 collection refunded, that being -- interim being during the
11 rate case period.

12 I'm at a little bit of a loss as how I then interject
13 myself to go back and basically reconsider a decision that I
14 didn't make to start with but the court has affirmed it.
15 That's the difficulty I'm having.

16 I guess the question is -- and, staff, in your mind
17 what was the basis of the Commission's decision to not order an
18 increase but to order only a partial refund of the interim
19 collection during the processing of the rate case?

20 MS. MERCHANT: You're referring to the issue on
21 what's the appropriate interim refund in the final order?
22 That -- we followed our standard practice that we use in all
23 rate cases to calculate an interim refund. We use the final
24 revenue requirement and we back out those items that were not
25 in effect during the interim collection period. And examples

1 of that would be pro forma expenses or inflation adjustments or
2 rate case expense. And that's what we did in this case. We
3 backed those items out.

4 COMMISSIONER DEASON: And so -- I don't mean to put
5 words in your mouth, but it's basically a formulistic way that
6 you evaluate that consistent with the statute; is that correct?

7 MS. MERCHANT: That's correct.

8 COMMISSIONER DEASON: Okay. Now let's move forward
9 to the appellate period. Now I know that the Commission in its
10 order granting stay allowed interim rates to be continued to be
11 collected. Now does that mean that the collection of those
12 interim rates is still subject to formulistic approaches of the
13 interim statute or is that just an amount at the Commission's
14 discretion that it felt reasonable was an amount to allow to be
15 collected during the -- as the stay -- since the stay was
16 granted? And maybe -- and that's partially a legal question, I
17 suppose, to some extent as well.

18 MS. MERCHANT: I believe that the four point -- I
19 mean, the interim increase that was in effect, I think that the
20 Commissioners just allowed that to stay in effect. I don't
21 think the Commissioners, when they looked at their stay, they
22 were even thinking about what amount would be refunded on a
23 perspective basis.

24 COMMISSIONER DEASON: In fact, does the Commission
25 have, even have the authority to grant interim rates during a

1 stay proceeding as contemplated by the statute? I thought
2 interim rates as granted by the Commission was for the period
3 of the processing of the rate case, and once we issued our
4 final order, those interim rates cease. That all the
5 Commission did was to grant an amount for purposes of the stay,
6 amount of revenue that the company collect, but then it ceases
7 to be the interim increase. It's the same rates, but it's no
8 longer an interim increase as defined by the statute.

9 Mr. Jaeger, can you help me?

10 MR. JAEGER: I think basically you're right. From
11 April 30th on after the appeal, you know, the appeal, we went
12 into a GTE type analysis, was there unjust enrichment and
13 basically, you know, was the order erroneous? And the court on
14 appeal upheld the order. So we were saying the utility
15 shouldn't get the benefit -- they got -- we did stay it and we
16 let them keep those interim rates just to completely protect
17 the utility and thinking the customers were totally protected,
18 also.

19 So basically I think when we went back and looked at
20 this, we were saying, well, if they take an appeal at this
21 point -- we were thinking final rates would go in effect within
22 20 days from that final order and that was what the presumption
23 was no appeal. So, yes, I think when we get to the appeal
24 period, May 1st on, then we can go into a different analysis
25 and we're not bound by the interim rate.

1 COMMISSIONER DEASON: And I'm bound by the
2 methodology, the formulistic approach of refunding interim
3 increases as contained in the statute.

4 MR. JAEGER: And I think what part of that policy
5 deal in Alternate Staff Two though was in the past we have not
6 gone back and changed it. And so that was the reason when
7 Commissioner Jaber was talking about is this a change in
8 policy, she didn't think it was, but staff thought maybe this
9 was a change in policy because in other appeals we've kept the
10 same interim rate formulistic approach. But on a closer
11 review, we thought that GTE applied and that if, if -- you
12 know, if it would have been an erroneous order, we'd have had
13 to tell -- you know, we would have been able to fix that
14 erroneous order. And then by the same token, if it's not
15 erroneous, then Aloha should not be allowed to profit or
16 benefit.

17 What the whole analysis that Alternate Staff One did
18 was, well, have they profited or benefited? Because in
19 addition to a revenue requirement comparing the interim test
20 year revenues and the final test year revenues, we set a rate
21 of return, we set rates and we set a revenue requirement. And
22 that's what the two -- the primary and Alternate One did; we
23 looked at that revenue requirement, those rates, and tried to
24 figure out if the utility did overearn. So that's where we
25 went in those two.

1 And what the -- Alternate Staff Two just took it, the
2 order at its face saying no revenue increase or decrease. They
3 did just that, you know -- you know they got 15.95 percent and
4 we said no revenue increase or decrease. But what the rest of
5 the staff did -- we went into analysis of what did they
6 actually get from these rates and what was the revenue
7 requirement and did they exceed that revenue requirement, did
8 they exceed that rate of return, and the main difference
9 between --

10 COMMISSIONER DEASON: Is that the standard to apply
11 to a pure straightforward interim increase is collected during
12 the period of the rate case?

13 MR. JAEGER: No. No. As -- the interim, it was set
14 forth in the order on Page 90 that calculated 4.87. It's
15 saying this is the way we calculate whether the interim
16 increase should be done, and that was what was, we were doing
17 for the rate case period.

18 But we're saying after April 30th, after this order
19 was issued, then we did an additional analysis and did a
20 different way of computing the refund.

21 COMMISSIONER DEASON: Yeah, I know. And that's part
22 of -- this is -- Alternative One does the, the traditional rate
23 of return test to determine the validity of an interim
24 increase; correct?

25 MR. JAEGER: I think there was a total mixture,

1 that's correct. But we also looked to see --

2 COMMISSIONER DEASON: And then my question is --
3 that's fine for right now. Then my question is that is a test
4 that is applied and it is an alternative as presented.

5 Are we legally required to do that during the
6 processing of the appeal? Ms. Helton, according to your
7 recommendation, no, you're not legally required to do that.
8 We're in a different phase of the proceeding. We're no longer
9 constrained by the strict interpretation of the interim
10 statute. Would you agree with that?

11 MS. HELTON: I would agree that that's the stance I
12 believe you have to take to be able to support Alternative Two.

13 COMMISSIONER JABER: Mr. Chairman, I couldn't hear
14 whoever that was.

15 CHAIRMAN BAEZ: Can you repeat yourself, Ms. Helton?

16 MS. HELTON: I believe that that's the stance that
17 you have to take to support Alternative Two, yes.

18 CHAIRMAN BAEZ: Did you get that, Commissioner Jaber?

19 COMMISSIONER JABER: I did. Thank you.

20 CHAIRMAN BAEZ: Okay. Commissioner Bradley.

21 COMMISSIONER DEASON: So we have -- it's your -- we
22 have the discretion to, to, to apply a broader test, one that
23 Senator Fasano and Public Counsel endorses and Mr. Shreve
24 endorses, one of general equity. We've told the customers that
25 you're to be protected. And if the decision were no increase,

1 well, then a 100 percent refund could -- that's within our
2 discretion, that's your position?

3 MS. HELTON: Yes, sir.

4 COMMISSIONER DEASON: Mr. Jaeger, what's wrong with
5 that?

6 MR. JAEGER: Just the reality of we granted -- in
7 addition to saying this represents neither an increase or a
8 decrease, we gave them a rate of return and we gave them a
9 revenue requirement and we set rates. And nothing has been
10 shown to show that those rates are incorrect. And if they had
11 charged those rates, they would have actually gotten more money
12 if they had implemented those rates. And so --

13 COMMISSIONER DEASON: And they could have done that,
14 but they chose not to. They chose to appeal. Did they subject
15 themselves to the --

16 MR. JAEGER: That's correct. They would have been
17 better off if they'd have just implemented these rates and gone
18 forward.

19 CHAIRMAN BAEZ: Commissioner Bradley.

20 COMMISSIONER BRADLEY: Yes. Question to staff. As
21 it relates to -- we have two types of agenda that we are giving
22 consideration to; is that correct? One is regular, final, a
23 posthearing decision. And we have -- Issue 3 is a PAA
24 decision, which means that any ruling that we render today
25 could possibly be protested by one or more of the parties that

1 have an interest in our ruling today; is that correct?

2 MS. HELTON: Yes, sir.

3 COMMISSIONER BRADLEY: What is the legal effect of,
4 of us denying staff as it relates to Issue 2 and approving
5 Alternative Two, and what is the legal effect of us approving
6 staff on Issue 2 and -- approving staff on Issue 2?

7 MS. HELTON: Well, in both cases Alternative Two --
8 or the decision on -- Issue 3 would be a proposed agency action
9 decision. Can I check with the General Counsel to see if he
10 agrees with me on something for Issue 2?

11 If you approve staff's recommendation for Issue 2, I
12 think that would be a final decision that would recognize, as
13 Commissioner Deason pointed out, that the Commission had
14 already decided that, that issue.

15 If you denied staff on Issue 2, I believe that that
16 should -- and you -- that should be rolled into the PAA process
17 that would be made available to interested persons for Issue 3.

18 COMMISSIONER DEASON: Let me interject a question
19 real quick like, please. Why do we have to do any of this as
20 PAA?

21 MS. HELTON: I believe that staff is bringing
22 Issue 3 here to you because we believe that the Commission did
23 not consider what would happen to any interim rates collected
24 during the appeal period. Therefore, there has been no point
25 of entry to any interested person to persuade the Commission

1 perhaps differently. I believe that any decision you make for
2 Issue 3 must be proposed agency action to give a point of
3 entry.

4 COMMISSIONER DEASON: What would we hear at a PAA
5 proceeding we've not heard today? Let's look at the practical
6 side of it.

7 MS. HELTON: There may be -- I, I, I don't disagree
8 with what you're saying; however, there may be citizens out
9 there, ratepayers out there who believe that they could
10 persuade the Commission to do something differently than, than
11 the arguments you've heard today. I mean, there's quite a few
12 ratepayers in the service area that are affected by any refund
13 of these interim rates.

14 COMMISSIONER DEASON: Wouldn't you also agree it's
15 probably, not a reality, but probably a fair assumption that
16 regardless of what we decide today, it's going to be back
17 before the court again in some form or fashion?

18 MS. HELTON: That's been the speculation that I've
19 heard.

20 COMMISSIONER DEASON: I'm sorry, Commissioner. I --

21 COMMISSIONER BRADLEY: I think we had several --
22 well, Mr. Chair.

23 CHAIRMAN BAEZ: Commissioner Bradley, you have the
24 floor.

25 COMMISSIONER BRADLEY: This is, in my opinion, a

1 two-prong decision that we're making, and it's a very
2 convoluted decision in my opinion. And I, I think it might be
3 best, and I'm just putting this out here, I think it might be
4 best for us to make a decision or go issue by issue. We've
5 already dealt with Issue 1. It might be best, based upon the
6 discussions that we've heard this morning, that maybe we would
7 go issue by issue rather than skip Issue 2 and go to Issue 3 as
8 we initially, after some discussion, decided to do. That, that
9 might, might resolve some of the issues. I'm only putting that
10 out there as a suggestion. I don't know what the other
11 Commissioners --

12 CHAIRMAN BAEZ: And I don't disagree with you. I
13 think that we've had enough discussion on at least both of the
14 operative issues to be able to come to some kind of decision.

15 COMMISSIONER DEASON: I'm certainly willing to
16 address Issue 2 at this point.

17 COMMISSIONER JABER: Mr. Chairman, I am also willing
18 to address Issue 2. But Commissioner Bradley asked an
19 excellent question I don't think Ms. Helton addressed fully,
20 which is what would be -- I think you said, Commissioner
21 Bradley, what would be the effect or the reality of if we
22 denied staff on Issue 2? I want to come back to that for a
23 minute, Mary Anne.

24 I'm worried about doing anything other than approving
25 staff on Issue 2 from a purely legal appellate standpoint,

1 recognizing this decision yet again goes up on appeal. What --
2 to do something other than what the panel did in the final
3 order on Issue 2, again, limited solely to the rate case
4 period, wouldn't we have to have a proceeding or something?

5 My concern is the final order, there was an
6 opportunity for a motion for reconsideration as it relates to
7 how we calculated interim, as the statute says, until the
8 effective date of the final order. No motion for
9 reconsideration that I recall on that point was entertained.
10 The case goes up on appeal. That issue was not brought before
11 the appellate court and, as Commissioner Deason said, the order
12 in its entirety was upheld.

13 I'm worried about the legal stance as it relates to
14 denying staff on Issue 2. Could you give me some feedback on
15 that?

16 MS. HELTON: I'm sorry. I thought I had said that if
17 staff's recommendation for Issue 2 is approved, that could be
18 entered as a final decision because, as staff's recommendation
19 points out, the Commission had already made that decision and
20 the appellate process for that time, for that decision has
21 passed. However, if the Commission were to deny staff for
22 Issue 2, I believe that that should be proposed agency action.

23 COMMISSIONER JABER: Okay. I missed that. So then
24 the PAA would give folks the opportunity to show us, as some
25 parties have said, where a mistake was made?

1 MS. HELTON: To show up -- I'm sorry.

2 COMMISSIONER JABER: To show us where a mistake was
3 made.

4 MS. HELTON: Yes.

5 COMMISSIONER JABER: Okay. I'm with you now.

6 Mr. Chairman, I can go issue by issue as well.

7 CHAIRMAN BAEZ: All right. Well, then we can --
8 Commissioner Davidson, one last comment.

9 COMMISSIONER DAVIDSON: Yeah. One question from
10 staff, and I probably approach this from a different vantage.
11 My main concern is with the customers, the ratepayers in this,
12 and not so much with the legal formalities of perhaps how we
13 defend a prior order, although that is a concern.

14 My question for staff is if ultimately the Commission
15 was at the point on -- if the Commission was of the view that
16 it wanted to order a refund of the entire difference of
17 \$346,161 compared to the staff Alternative Two in Issue 3 of
18 \$278,113, is it staff's view, if the Commission sought to do
19 that, that we would order the full amount on Issue 3 as a
20 modification there? And I ask because if that is the course of
21 action, if we are ultimately going to get to ordering a refund
22 of the full amount, then I can support staff's recommendation
23 on Issue 2. I'm comfortable with that issue if ultimately
24 we're going to get to the point of ordering the full amount.
25 However, I'm, I'm a bit at odds of how I need to sort of vote

1 as the issues are laid out because my, my concern is I
2 personally want to see a refund of the full amount.

3 MS. HELTON: Can I ask you a question?

4 COMMISSIONER DAVIDSON: Sure.

5 MS. HELTON: When you say the "full amount," do you
6 mean -- I'm thinking of this in terms of the appeal period and
7 the rate case period.

8 Do you mean the amount collected during the appeal
9 period as well as the interim amount collected during the rate
10 case period?

11 COMMISSIONER DAVIDSON: Right. I'm thinking the full
12 amount without sort of the legal, the formal distinction of the
13 periods. I'm looking at it from the customers' standpoint. We
14 paid in \$499,671. We've been paid back, refunded \$153,510.
15 That leaves a difference of \$346,161. How from my standpoint,
16 and I don't know where the other Commissioners are on this, how
17 could we get to a refund of the full amount while still
18 enabling me to support staff on Issue 2, thus protecting the
19 sanctity of that, of that order?

20 MS. HELTON: Unfortunately I can't figure out a way
21 to do it other than to deny Issue 2 and to then approve
22 Alternative Two for Issue 3.

23 CHAIRMAN BAEZ: Commissioner Davidson, just so you
24 know, I, I understand where you're trying to get to and,
25 believe me, struggling with, with the philosophy behind it and

1 trying to stay true to, to our final order in some sense. You
2 know, the Commission said no, no increase in rates. And, and
3 in seeking to, to stick to that, I'm caught by that same logic
4 with, with the subject of Issue 2, which was also in a final
5 order. So it becomes very difficult for me, in fact, to say,
6 well, we're going to hold, we're going to hold true to, to our
7 basis and to our decision on, on a broader issue of the rate
8 increase and yet not hold to our decision in that same final
9 order in terms of, in terms of the percentage of the interim
10 refund.

11 Now I agree with Commissioner Deason that as part of
12 the appeal period we've moved into another stage. We've moved
13 into unchartered waters. And I don't, I don't necessarily
14 agree with the company that the final order addressed the whole
15 of the period. So --

16 COMMISSIONER DAVIDSON: Can I ask a follow-up
17 question on the final order that is at issue here? And I guess
18 it's a question for, for legal or technical.

19 Did that final order preclude us from refunding any
20 additional, any additional amounts during the, during the rate
21 case period, meaning the order, as I understand it, stated this
22 amount shall be refunded. Did the order go on to state,
23 however, no additional amounts shall be refunded? Sort of
24 under the guiding principle of where we need to make the
25 customers whole; if they paid in \$1,000, they get back \$1,000.

1 That order, we said, all right, we're going to refund \$100 of
2 that thousand. Did we then -- did the order then go on to say,
3 however, no additional amount shall ever be refunded?

4 MR. JAEGER: Commissioner, it didn't go on to say it,
5 but that's the way it's always been. If you say refund 4.87,
6 then they get to keep the rest. And through the issuance of
7 the order April 30th, that's what staff is saying. The 4.87 --
8 and I would say it was not locked in stone, but when it was not
9 appealed and then the whole order was upheld on appeal, then
10 that 4.87 at least through April 30th was, was what should be
11 refunded and no more.

12 COMMISSIONER DAVIDSON: If we did not make the
13 distinction between the, the rate period and the appeal period,
14 we just didn't make that distinction and we just issued an
15 order today stating that all outstanding amounts that have not
16 been refunded shall be refunded and we didn't distinguish
17 amongst the periods, would that -- could that be done? Think
18 creatively.

19 MR. JAEGER: I think you would be going against --

20 COMMISSIONER DAVIDSON: Well, I'm asking legal
21 actually. I apologize.

22 MR. JAEGER: I am legal.

23 COMMISSIONER DAVIDSON: Oh, I apologize. I thought
24 you were technical. You're sitting down there.

25 MR. JAEGER: No. I've been letting -- I've tried to

1 let Trish answer the technical part of it. There's always
2 overlapping. Sorry, Commissioner.

3 COMMISSIONER DAVIDSON: I apologize.

4 MR. JAEGER: I believe, as Commissioner Deason has
5 been saying, that you have an order that was issued by the
6 Commission, it went up on appeal, that was not contested. So
7 up until April 30th that 4.87 percent, based on administrative
8 finality, should not be changed.

9 CHAIRMAN BAEZ: Commissioners, if there's no other
10 questions, we can entertain a motion.

11 COMMISSIONER JABER: Mr. Chairman, let me throw out a
12 motion and see how far we get.

13 CHAIRMAN BAEZ: Commission Jaber, can I ask you to
14 speak into your microphone?

15 COMMISSIONER JABER: Absolutely. Absolutely. Let me
16 throw out a motion and see how far we get.

17 And my motion on Issue 2 is with the understanding
18 that I support Alternative Two in Issue 3. Okay? My motion
19 would be to approve staff on Issue 2.

20 CHAIRMAN BAEZ: There's a motion on Issue 2 to
21 approve staff. Is there a second?

22 COMMISSIONER DEASON: I'm going to second it, and
23 then let me state why.

24 There are three main considerations that I have in
25 supporting this motion to approve staff on Issue 2. First of

1 all, it's very clear that there was a final order issued by the
2 Commission; it was a panel of Commissioners, but nevertheless
3 it was a final order. It withstood appeal. The question of
4 the interim refund was not even appealed, I don't, I don't
5 believe. It could have been the subject of a reconsideration,
6 it could have been the subject of appeal. It was not. I think
7 that there needs to be some administrative finality. I think
8 what we're being asked here to some extent is to reconsider a
9 vote of a panel of Commissioners. I'm uncomfortable in doing
10 that.

11 Also, it's my understanding that the refund that was
12 ordered in the final order for the interim period, it was, it
13 was done consistent with the statute, it applied the statutory
14 required criteria that we have historically used in evaluating
15 what should be the refund of an interim amount.

16 I'm also concerned about the precedent we would be
17 setting if we did not approve staff on Issue 2. And the
18 concern is this, and it's a question that I addressed to
19 Mr. Burgess and he very -- he indicated that he would agree it
20 could be a concern. Not necessarily he agreed with my
21 argument, but he did acknowledge it could be a concern. And
22 the precedent would be this: What if we find ourself in some
23 future case where we allow an interim increase and final rates
24 are higher than the interim we allowed, which happens
25 routinely? Because usually we're very, very conservative when

1 it comes to interim. If we allow a final increase greater than
2 interim, then do we subject ourselves in the name of equity
3 coming back and surcharging customers during the interim period
4 to allow the company to receive the same revenue they would
5 have received had we known what the final rates were already
6 going to be at the time that we granted the interim increase?

7 I hope we never get there. I know that there are
8 probably very sound legal arguments against doing that. But I
9 just don't want to subject ourselves to even that possibility.
10 So for those three reasons, I'm going to support the motion to
11 approve staff on Issue 2.

12 CHAIRMAN BAEZ: We have a motion and a second. All
13 those in favor, say aye.

14 Aye.

15 COMMISSIONER JABER: Aye.

16 COMMISSIONER DEASON: Aye.

17 COMMISSIONER BRADLEY: Aye.

18 CHAIRMAN BAEZ: All those nay.

19 COMMISSIONER DAVIDSON: Nay.

20 CHAIRMAN BAEZ: Record the vote as four to one.
21 We're on Issue 3.

22 COMMISSIONER JABER: My motion on Issue 3, Mr.
23 Chairman, would be to approve the Alternative Two staff
24 recommendation.

25 CHAIRMAN BAEZ: All right. We have a motion to

1 approve Alternative Two of staff's recommendation. Is there a
2 second?

3 COMMISSIONER DAVIDSON: Chairman, I'll second that
4 motion with the understanding that from my vantage this is the
5 best alternative of that recommendation that gets the customers
6 the most money.

7 CHAIRMAN BAEZ: We have a motion and a second. All
8 those in favor, say aye.

9 (Unanimous affirmative vote.)

10 COMMISSIONER DEASON: And let me just say that --

11 CHAIRMAN BAEZ: Commissioner Deason, yes.

12 COMMISSIONER DEASON: -- I think it's very, it's
13 important -- I see a distinction between the interim period and
14 the appellate period. I think that's inherent in the motion.

15 And also I think it is extremely important, as was
16 presented by Public Counsel, Mr. Shreve and Senator Fasano, it
17 is very important that the integrity of the process be
18 maintained, that customers, when they are told that they are
19 protected, they have confidence in the decision and that
20 whatever they've paid in, that they're going to get back. So
21 that's the reason I'm voting the way I am.

22 CHAIRMAN BAEZ: And I would echo those sentiments and
23 show the vote as unanimously accepting Alternative Two of
24 staff's recommendation.

25 There are a couple of other issues.

1 SENATOR FASANO: May I ask a question? Can I just
2 verify what that amount would be by staff, how much the
3 customers will be getting back?

4 CHAIRMAN BAEZ: Ms. Merchant, can you provide that
5 number while we move along?

6 SENATOR FASANO: Under the motion, adopted motion of
7 Number Two.

8 MS. MERCHANT: It will be \$278,113. That will be an
9 additional refund above what they've been refunded already.

10 SENATOR FASANO: So the customers will get an
11 additional \$278,113. Thank you.

12 CHAIRMAN BAEZ: That's the number we have.
13 Thank you, sir.

14 COMMISSIONER BRADLEY: Why don't we also give the
15 amount, give the total amount.

16 CHAIRMAN BAEZ: Commissioner Bradley -- oh, well --

17 MS. MERCHANT: The total is \$431,623.

18 COMMISSIONER BRADLEY: Okay. Is that the total
19 amount of the refund?

20 MS. MERCHANT: Correct.

21 CHAIRMAN BAEZ: Commissioners, we're on Issue 4.
22 Are there any questions or a motion?

23 COMMISSIONER DAVIDSON: Move staff.

24 COMMISSIONER DEASON: Let me -- I, I understand -- I
25 guess I have difficulty issuing a show cause for an amount that

1 appears, from what I understand, it appeared to be an oversight
2 on the company's part, and that once they were alerted to it,
3 they promptly made the correct deposit into the, the escrow.
4 And I would also note that the fine is, is some \$200, which I
5 show -- I think indicates that in staff's mind it was not an
6 egregious violation. It's going to cost this agency more than
7 \$200 to process issuing the order to show cause and the company
8 to incur costs to respond to the show cause. I just don't see
9 that it's, it's really worthwhile at this point, so I'm not
10 going to approve it. I'm not going to go along with staff's
11 recommendation on this. I would just simply recognize that
12 there has been a violation because any violation, even though
13 it may have been an oversight, it is willful according to our
14 interpretation. I just don't think it's at the point to where
15 we need to go forward with a show cause.

16 COMMISSIONER DAVIDSON: And, Chairman, I agree. I
17 jumped the gun. I was on the close docket aspect, not the show
18 cause. I agree wholeheartedly with Commissioner Deason.

19 CHAIRMAN BAEZ: I realize that's what you were on,
20 Commissioner Davidson. If you would like to withdraw your
21 motion and --

22 COMMISSIONER DAVIDSON: Withdrawn.

23 COMMISSIONER JABER: Mr. Chairman, just for the
24 record, I agree with Commissioner Deason. The amount -- the
25 whole idea behind a show cause is to create a situation where

1 there's corrective action or remedial measures, and I don't, I
2 don't think that the amount does that, number one.

3 Number two, I do believe that even staff acknowledges
4 there was an attempt.

5 And then finally Issue 3 was the critical one for me
6 in terms of getting money back to the customers.

7 I don't think Issue 4 necessarily serves the
8 consumers in that fashion, so I agree with Commissioner Deason
9 and Davidson.

10 CHAIRMAN BAEZ: Thank you, Commissioner Jaber. In
11 light of that, do we have a --

12 COMMISSIONER DEASON: I would move we deny staff and
13 not issue a show cause.

14 COMMISSIONER DAVIDSON: Second.

15 CHAIRMAN BAEZ: Motion and a second. All those in
16 favor, say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN BAEZ: Issue 5.

19 COMMISSIONER DAVIDSON: Move staff.

20 CHAIRMAN BAEZ: Thank you, Commissioner Davidson.

21 COMMISSIONER DEASON: Second.

22 CHAIRMAN BAEZ: Motion and a second. All those in
23 favor, say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: Thank you, staff, and thank you to

1 the parties for participating.

2 (Concluded at 11:45 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3

4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

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

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

17 DATED THIS 27th DAY OF JANUARY, 2004.

18 
19 _____
20 LINDA BOLES, RPR
21 FPSC Official Commission Reporter
22 (850) 413-6734
23
24
25