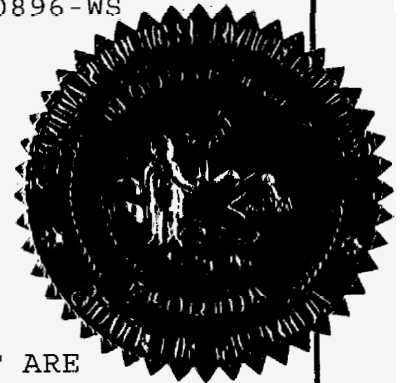


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020896-WS

In the Matter of:

PETITION BY CUSTOMERS OF ALOHA
UTILITIES, INC. FOR DELETION OF
PORTION OF TERRITORY IN SEVEN
SPRINGS AREA IN PASCO COUNTY.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON
 COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, January 4, 2005

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 JOHN L. WHARTON, ESQUIRE, representing Aloha
3 Utilities, Inc.

4 CHARLES BECK, ESQUIRE, representing the Office of
5 Public Counsel.

6 SENATOR MIKE FASANO, representing his constituents.

7 V. ABRAHAM KURIEN, M.D., representing his
8 constituents.

9 RICK MELSON, GENERAL COUNSEL, ROSANNE GERVASI,
10 ESQUIRE, and MARY ANNE HELTON, ESQUIRE, representing the
11 Florida Public Service Commission Staff.

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P R O C E E D I N G S

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3 CHAIRMAN BAEZ: All right, Commissioners, we are now
4 on Item 6. And what I would like to do is have staff tee it up
5 for us briefly, and then we'll hear from the, the senator and,
6 and the rest of the parties.

7 MS. GERVASI: Commissioners, Item 6 is staff's
8 recommendation concerning what action, if any, the Commission
9 should take in the event that the motion for termination of
10 deletion proceedings is granted, which it just was.

11 The recommendation contains a primary and an
12 alternate recommendation, with the primary recommendation being
13 that the Commission should decline to initiate deletion
14 proceedings against Aloha because there is not probable cause
15 to believe that Aloha has violated a statute, rule or order of
16 the Commission that warrants the imposition of a penalty.

17 The alternate recommendation is for the Commission to
18 open a new docket to initiate deletion proceedings against
19 Aloha because there is probable cause for the Commission to
20 find that Aloha has violated its statutory duty under
21 Section 367.111(2), Florida Statutes, to provide water service
22 to the areas which were included in the four customer-initiated
23 deletion petitions, that is not less sufficient than is
24 consistent with the reasonable and proper operation of the
25 utility system in the public interest.

1 Representatives of Aloha are present to address the
2 Commission on this item, as is Senator Fasano, and Mr. Beck
3 with OPC, and Dr. Kurien, a customer of Aloha. Staff is
4 available to answer any questions.

5 COMMISSIONER DAVIDSON: Chairman --

6 CHAIRMAN BAEZ: Thank you, Ms. Gervasi. And --

7 COMMISSIONER DAVIDSON: -- could I ask staff a
8 question for --

9 CHAIRMAN BAEZ: Yes. Please. Go ahead.

10 COMMISSIONER DAVIDSON: Thank you, Chairman. And if
11 it's -- if primary versus alternate staff should address this,
12 that's fine. Or if you feel comfortable just addressing it,
13 fine. But we've, in essence, decided in Item 5 that a
14 certificate is, in fact, a license; that deletion of a license
15 requires that certain procedures be followed. And there's been
16 the statement made that the PSC, and staff seems to agree,
17 would actually be the one that if there ever was a revocation
18 of a license would be the one prosecuting that.

19 What, if any, is the difference or the differences in
20 the burden of proof in a license revocation action than what
21 staff and the Commission may have assumed it was in the
22 deletion of territory? What is it that's different in this
23 type of case that would have to be met? And I know the parties
24 will address this too, but I'd like to hear from staff its
25 opinion.

1 MS. GERVASI: There's a fundamental difference in the
2 standard of the burden of proof, as well as which entity would
3 carry that burden.

4 Under the method that we have been proceeding, the
5 customers initiated the deletion petitions and we were
6 operating under the assumption that for that reason the
7 customers being the petitioners carried the typical standard
8 of -- for the burden of proof, which is a preponderance of the
9 evidence, which is typically used in administrative actions.
10 However, by terminating the proceeding and determining that the
11 provisions of Chapter 120 concerning licensing applies, the
12 agency needs to initiate the proceeding and operate under a
13 stricter burden of proof, which the agency would need to carry,
14 of clear and convincing evidence.

15 COMMISSIONER DAVIDSON: Thank you.

16 CHAIRMAN BAEZ: Thank you, Commissioners. And right
17 now what we're going to do is, Mr. Wharton, we're going to hold
18 you in rebuttal. And, Senator Fasano, welcome. Thank you for
19 being here.

20 SENATOR FASANO: Mr. Chairman, thank you very much.
21 And before I begin, may I congratulate and welcome
22 Commissioner Edgar. Hopefully you won't hear too much of Aloha
23 for the next few years, if the decision goes correct today.

24 Anyway, honored members of the Florida Public Service
25 Commission, thank you for allowing me to speak to you today

1 regarding the ongoing saga or should I say rather the tragedy
2 which is known as Aloha Utilities. I come before you today to
3 advocate for the residents of the Aloha Utilities Seven Springs
4 service delivery area and ask that you become their voice. I
5 ask that you become their voice today.

6 By adopting your staff's alternative recommendation,
7 you will not only allow this deletion proceeding to move
8 forward, you will give the customers a chance to have their day
9 in court.

10 During the ten plus years of my own involvement in
11 this case I have seen Aloha try to use the legal system to its
12 advantage and to the customers' disadvantage time and time
13 again. While Aloha repeatedly states that it cares about its
14 customers and claims to do all that it can to help them, it
15 continues on a path using this very body to fight any attempts
16 to be held accountable for its actions.

17 We are here today because Aloha Utilities has filed a
18 motion to have a customer-organized led petition drive to seek
19 a divorce from the utility thrown out on a technical legal
20 realm. Just as in every case before this, whether it is a rate
21 case or an interim rate refund, Aloha is attempting to use what
22 in the end amounts to be free legal service to further its own
23 interests at the expense of the very people who keep the
24 company in business. Whether its argument is legally valid or
25 not is a matter for this body to decide. But it is my opinion

1 that if you agree that the customers which you have do not have
2 the legal standing to demand their homes be deleted from
3 Aloha's service delivery area, then there's sufficient
4 evidence, sufficient evidence compiled over the years to
5 convince you that the only alternative available to this body
6 is to become the champion of the people and move forward as the
7 petitioner yourselves.

8 Over the years the residents have presented
9 compelling evidence that the water they receive from Aloha is
10 foul, smelly, discolored and unusable. Throughout the myriad
11 public hearings held over the past decade the members of this
12 assembled body and your predecessors, some who are here today,
13 have seen firsthand the product delivered by the corporation,
14 which can only be described as having no sense of corporate
15 responsibility. Aloha knows that no one single customer has
16 the ability to unhook from Aloha's water pipes and hook up with
17 any other utility company. Its monopoly is complete and its
18 business practices reflect that disregard for the well-being of
19 the people it is charged with serving.

20 Because of Aloha's unwillingness to take a stand and
21 do something to serve its customers, State Representative
22 Tom Anderson and I passed legislation last year that gave the
23 Pasco County Board of County Commissioners the ability to
24 create an ad hoc committee to look at the utility complaints.

25 The first utility to be investigated, you guessed it,

1 was Aloha. To my knowledge, Aloha is the only utility company
2 in Pasco County that has yet generated enough complaints to
3 warrant the creation of an ad hoc committee.

4 While the public hearings, rate -- public hearings,
5 rate cases, legislation and creation of an ad hoc committee
6 were taking place, the customers did not sit idly back waiting
7 for government to take action. They took it upon themselves to
8 organize and proceed with a plan they created on their own.
9 The customers, with the realization that Aloha has not been
10 brought to task, the citizens came together and requested that
11 they be given a chance to have their water provided by Pasco
12 County, which has successfully a history of dealing with black
13 water and would be the utility of choice for those residents.
14 Given that Aloha has the exclusive franchise to provide water
15 service, only the Public Service Commission has the authority
16 to revoke Aloha's license to be the water provider.

17 Your staff has made two recommendations that you, of
18 course, will consider right now. I encourage you,
19 Commissioners, I plead with you to accept the alternative
20 recommendation that allows the deletion proceedings to move
21 forward with the Public Service Commission in the driver's
22 seat. If you accept the primary recommendation, you, in
23 essence, will be forever closing the door on the legal process
24 to the residents. You will also be stating that the mountains
25 of evidence provided by the customers over the years do not

1 justify allowing the deletion to proceed. By denying the
2 citizens the ability to separate from Aloha, you will be
3 branding them a life sentence of arrogance, incompetence and
4 undrinkable water. In the strongest terms I ask that you would
5 adopt the alternative recommendation.

6 When creating the statute defining the legislative
7 intent behind the Public Service Commission, the regulation of
8 water and wastewater, you all know it, statute, Florida Statute
9 367.011, in (3) it states, "The regulation of utilities is
10 declared to be the public interest, and this law is an exercise
11 of the police power of the state for the protection, the
12 protection of the public health, safety and welfare."

13 The customers have done their part by providing
14 evidence you need, Commissioners. The Legislature has given
15 you the broad authority to exercise your power to protect the
16 water customers. This body has before it the accumulated
17 testimony and evidence of ten years, ten years, provided
18 through the Herculean efforts of the customers who have brought
19 this case to you for consideration. Your choice is clear
20 today. I have complete confidence that you, the Commission,
21 will do what is in the best interest of Aloha's customers and
22 allow this deletion proceeding to move forward. Aloha will
23 have the opportunity to defend itself before, of course, this
24 body right now. Their legal rights are not being taken away if
25 you adopt the alternative recommendation. The customers'

1 rights will be denied if you grant Aloha's motion and adopt the
2 primary recommendation. **You will forever throw out any chance**
3 the customers will have to receive that most basic of human
4 needs, clean, drinkable water.

5 And just a follow-up, the question to your staff was
6 what recourse do the customers have? **You're their recourse.**
7 You should be their advocate to make sure that they provide
8 clean, drinkable water. And if they can't, then remove them
9 from servicing that area and put someone in place that can do
10 that, and we have someone and that's Pasco County. Thank you,
11 Mr. Chairman. Thank you, Commissioners.

CHAIRMAN BAEZ: Thank you, Senator. Mr. Beck.

13 MR. BECK: Mr. Chairman, I think Dr. Kurien would
14 like to go, if that's okay.

15 CHAIRMAN BAEZ: All right. Dr. Kurien, welcome.

16 DR. KURIEN: Good morning, Commissioners. Thank you
17 for giving me an opportunity once again, and this is the sixth
18 time that I am coming up here to plead the case of my own and
19 of the customers of Aloha.

20 During the ten years between 1993 when this problem
21 was first brought to the attention of the Public Service
22 Commission and the year 2002 all that the customers could do
23 was to come and complain to you and bring bottles of black
24 water because they didn't know what else to do. The science of
25 water processing was, proposed by Aloha was the norm that

1 determined whether something was wrong in the processing method
2 and the distribution system.

3 Between the year 2002 and 2005 the customers have
4 adopted a new approach. Instead of confronting Aloha, we
5 offered to sit down and negotiate with Aloha and work towards a
6 scientific solution which would be a win-win situation for both
7 the utility and the customers, and yet for three years Aloha
8 has refused to do that and has not cooperated with their
9 customers.

10 The customers have put an enormous amount of work
11 into this matter for the last three years. They have provided
12 you, and here is just part of it, the evidence which shows that
13 there is a significant problem with the water that Aloha
14 supplies, which even though it appears to be clean and clear to
15 the meter, the domestic meter, seems to turn unpredictably into
16 black water and rotten egg smell in the customers' pipes.

17 We have provided evidence from public records, not
18 from our own imaginations, from public records which shows that
19 there is significant problems with the way Aloha has been
20 processing this water. In fact, in 1996 suggestions were made
21 to Aloha as to what should be done. But instead of admitting
22 that there was something wrong with the process that was being
23 used, it defended that process and claimed that the water was
24 all right and met all state and federal standards. That itself
25 is not totally accurate.

1 Working to get evidence to prove our case that the
2 water that we are receiving is unsatisfactory, we have worked
3 for three years. And during that process we have learned of
4 some of the aspects of Aloha's management which is undoubtedly
5 responsible for the fact that remediation has not taken place
6 in this matter. Black water is not uncommon in Florida, yet
7 other utilities have recognized the scientific reasons for it
8 and have taken steps, instead of claiming that chlorination
9 alone was satisfactory for that purpose.

10 In attempting to work with Aloha and coming up here
11 so often, what we have wanted was an opportunity to present to
12 you the accurate science of water processing. The ways in
13 which Aloha when it had the opportunity to work with the
14 customers did not work with the customers and sought legal
15 maneuvering as the way to deal with customers. And today we
16 have seen another aspect of it; in this case they were
17 perfectly (phonetic) or perhaps correct.

18 We want an opportunity for you to very seriously
19 consider the mountain of documents that we have provided to
20 you. And I'm sure, as Senator Fasano said, that you have the
21 wisdom to look at this evidence and give us the option that we
22 have looked for, which I think is the only logical option that
23 is now available, and that is for us to find a new provider who
24 can provide water which is processed on an appropriate
25 scientific method, approaches technical difficulties that are

1 bound to arise in a scientific manner, and to treat customers
2 as essential people to carry on a relationship which provides a
3 win for both the customers and the provider.

4 I thank you once again for giving me the opportunity
5 to speak to you. I hope you will go through this evidence,
6 which is collected over a three-year period, very carefully,
7 and come to a conclusion which I hope in your judgment you can
8 defend as the right one. Thank you.

9 CHAIRMAN BAEZ: Thank you, Dr. Kurien.

10 Mr. Beck.

11 MR. BECK: Thank you, Mr. Chairman. My name is
12 Charlie Beck with the Office of Public Counsel. Commissioners,
13 the issue that's before you at this point in the proceeding is
14 whether there's probable cause to believe that Aloha operates
15 its system in a way that is less sufficient than is consistent
16 with the reasonable and proper operation of the utility system
17 in the public interest.

18 Most of you have a, a long familiarity with Aloha. I
19 know many of the Commissioners here sat in the hearings in 2004
20 that occurred and the many hearings before that. I believe,
21 Commissioners, the evidence that you've heard before as well as
22 the evidence that's been presented or filed in the docket by
23 the customers will show you that there's overwhelming evidence
24 to believe that Aloha violates that standard that's in the
25 statutes.

1 And November 18th, Commissioners, the customers
2 prefiled 19 pieces of testimony. I brought it here with me. I
3 hope you've had a chance to read this because I think that this
4 provides the probable cause that, that, that's needed to
5 proceed. And the staff really doesn't go into the details at
6 all of the testimony that's been filed. So I hope you've read
7 it at least and understand the effort that the customers have
8 put forth to present the case of the overwhelming evidence that
9 the -- of how this company operates.

10 One thing I did want to address is the issue of
11 whether this is just about the water, which the staff discusses
12 extensively in its recommendation, or is there more to it than
13 just the water? And the evidence the customers presented in
14 the testimony, which they intend to present if you proceed, is
15 that there's a management issue every bit as bad as the water
16 that they deliver to the customers. Their response, the
17 company's response to complaints that have been made over, over
18 the last decade has been one of denial. Management has claimed
19 on numerous occasions that there are only a few disgruntled
20 customers and that their water is clean, clear, odor free and
21 safe. Since they believe that there's nothing wrong that
22 they're doing, they do nothing about it to solve the problem,
23 but the -- their claim that they're doing nothing wrong is
24 contradicted by the evidence. You know, you've seen hundreds
25 of people attend the hearings and you've seen the water that

1 comes from their taps. I know customers have brought it to the
2 hearings; there's been pictures presented to you before. I
3 don't need to go into it other than to say that the water is
4 disgusting and it's something that nobody should have to live
5 with in their homes when they turn on the tap to turn on the
6 water.

7 The extent of customer dissatisfaction with the way
8 the product that the company provides is, is contained in your
9 staff recommendation at several points. On Page 5 of the staff
10 recommendation they, they go over a survey that was conducted
11 in 1999 of customer satisfaction. Of the 3,700 responses that
12 came back, 73 percent of the customers who said they observed
13 discolored water, 71 percent indicated that odor and taste was
14 unacceptable. This from a company that says they're providing
15 clean, clear and odor-free water.

16 The staff has recently conducted another survey
17 that's discussed at Page 15 of the testimony. In this survey,
18 again taken five years later than the one before, what are the
19 results you see? And it's basically the same thing.
20 64 percent of the customers responding have a black water
21 problem. The majority of those without a black water problem
22 still favor deletion of the, of the -- of their territory from
23 Aloha. In fact, 81 percent of the customers responding favored
24 deletion, and only 2 percent, only 2 percent of the customers
25 said they have no problem with the service of the company.

1 That means 98 percent do. And I can't think of any other
2 company that you would get that kind of results with. That's
3 not operation in the, in the public interest. It's a shameful
4 record and it's one that can -- only a state-sanctioned
5 monopoly could have and still survive as a business.

6 The problems have persisted year after year and
7 nothing has been done about it. Dr. Kurien has filed probably
8 the biggest in volume piece of testimony in November, and he's
9 made an extensive case for the knowledge that the company had
10 of the problems, that their processing procedures were
11 inadequate, and that they simply ignored it, they denied it,
12 and they've done nothing that could have been done to help with
13 the problem.

14 Let me mention briefly two other testimony that's
15 been prefiled in the case. One is by, by Wayne Forehand, and
16 his testimony goes into some detail what it was like to try to
17 work with the company. Back in the 2002 rate case the PSC
18 ordered Aloha to form a Consumer Advisory Committee. He
19 concludes that the whole effort was a dismal failure. To begin
20 with, the company did not go forward with it for about a year
21 because they appealed. Well, I guess technically speaking
22 since they appealed the rate case order, which they ultimately
23 lost on appeal, they didn't have to form a Consumer Advisory
24 Committee. Well, don't you think a company would do that,
25 facing the complaints and problems they have?

1 Mr. Forehand was elected chairman of the Consumer
2 Advisory Committee in April 2003, and his testimony provides a
3 number of examples where the company thwarted the success of
4 the committee. They wouldn't share any business or training
5 plans with the customers, they wouldn't respond to
6 communications unless the PSC got involved or they copied our
7 office. The members of the committee wanted to visit utilities
8 and visit Aloha's facilities to inspect it. They were able to
9 do that with a number of the other local utilities but not
10 Aloha's. Aloha refused to let the customers even inspect their
11 plant, even though other utilities in the area did. They would
12 mail agenda notices or meeting notices to persons who asked
13 them to that weren't on the committee. They demanded that all
14 questions to the company be in writing, and they refused to
15 discuss technical issues as part of the, as part of the
16 process.

17 Mr. Forehand, who was the chairman of the committee,
18 concluded that, concludes that the committee was a dismal
19 failure because of the lack of cooperation by Aloha and their
20 denial of any need for improvement. Again, compare their
21 denial of needed improvement with the results of the customer
22 surveys that the staff has conducted, one five years ago, one
23 very recently. Obviously they need to improve. But the
24 company simply is in denial and does nothing about it.

25 Let me also mention briefly the testimony by

1 Dr. John Gaul, who is a customer of Aloha, receives service
2 rom them. Dr. Gaul has a Ph.D. in chemistry, and he has been
3 customer of theirs for 18 months. His testimony says that
4 hey are arrogant and they blatantly dismiss customer needs and
5 oncerns. His testimony shows that he believed customers were
6 being stiff-armed by an avalanche of technical misdirection
7 esigned to silence customers by blaming customers, their pipes
8 and their water softeners, instead of taking any active action
9 on their own to, to improve the service they're providing. He
10 describes Aloha's operation as primitive compared to any
11 self-respecting monitoring operation, and particularly points
12 out that there's no automated monitoring on the wells and they
13 get no feedback control regarding their chlorine injection,
14 something that could have easily been done, inexpensively done,
15 out the company simply is in denial and does not go forward.

16 So what I submit to you, Commissioners, there's
17 overwhelming evidence for the Commission to go forward in this
18 case and proceeding. I know in Item 5 you mentioned some
19 concern about the customers' input. Well, let me assure you at
20 least what I see as our role, if you decide to go forward, and
21 that is that we will be very active, that any customer who
22 wants to testify, we will do everything we can to get their
23 testimony in front of you. We would intervene. I would hope
24 you would hold service hearings, which not only would be
25 allowable but appropriate, I believe, once the case goes

1 forward. The burden of proof shifts and the staff becomes the,
2 the prosecutor, as it were; thus, it has the burden of proof.
3 But that doesn't mean -- you know, the customers are ready,
4 willing and able to assist all they can. I mean, they've shown
5 they're ready to do that. We've basically filed the case, I
6 think, that can be used to go forward.

7 So in conclusion, Commissioners, we urge you to adopt
8 the alternative recommendation, go forward. There's not just
9 probable cause, there's overwhelming evidence for the
10 Commission to go forward. Thank you.

11 CHAIRMAN BAEZ: Commissioners, if there's no burning
12 questions, I'd like to get all the statements in and then we
13 can go ahead and engage in our question and answer. Thank you.

14 MR. WHARTON: Thank you, Mr. Chairman. John Wharton,
15 Rose, Sundstrom & Bentley, Tallahassee, on behalf of Aloha.

16 Commissioners, we strongly support the primary staff
17 recommendation as being in the best interest of Aloha, its
18 customers and the Commission.

19 Commissioner Davidson asked a minute ago whether
20 there was precedent for this in Florida history. To the extent
21 that it has been uncovered by our extensive research, there's
22 no precedent for this in American history, this type of a
23 deletion in scope or scale of a regulated entity that was
24 originally granted a license, because there are millions and
25 millions of dollars at stake here. I could not find any case

1 on point.

2 What the Commission -- when the Commission makes its
3 decision this morning, it needs to consider very carefully the
4 following. Aloha has done everything that it has ever been
5 required to do by a Commission order. It has not flaunted your
6 authority, it has not violated your orders and, most of all,
7 Commissioners, it has never refused to either recognize or
8 address these customers' concerns. There are some mantras that
9 the customers tend to repeat at these meetings and at hearing,
10 but Aloha has never denied that this problem exists.

11 The primary recommendation is correct that there is
12 no probable cause that Aloha has violated a statute, a rule or
13 an order that warrants the imposition of any penalty, much less
14 this most drastic of all penalties that are provided for in the
15 Florida Administrative Procedure Act.

16 In reviewing the primary recommendation, it's
17 incumbent upon the Commission to consider that Aloha has done
18 all those things that have been pointed out and, in fact, more
19 to address the concerns of the customers, despite the fact that
20 the water meets all of the state and federal drinking water
21 standards. And I don't say that the way that it is often cast
22 by the customers as that that is our excuse for doing nothing,
23 but rather if we weren't meeting the drinking water standards,
24 I could understand the Commission saying this is the effort you
25 should have put forth. But, in fact, the effort that Aloha has

1 put forth over the years, the tremendous amounts of time and
2 resources and effort and money spent was all spent in the face
3 of continual compliance with those drinking water standards.

4 For you, Commissioners who have been serving on the
5 Commission for a while, you know and you have witnessed that
6 there has been an evolution scientifically, practically and in
7 terms of common sense of the understanding of this issue. When
8 Aloha first began to discuss these proceedings, and these
9 transcripts are clear and maybe these matters will be brought
10 to your attention in the future, many of the concepts that are
11 now accepted were ridiculed. The fact that the water was in
12 compliance, the fact that the water was clear at the point of
13 delivery, many of these things that are now accepted were, were
14 mooted not just by customers but by expert witnesses.

15 That -- Aloha suggested in these early proceedings
16 that a change was occurring on the other side of the customers'
17 meeting. That was something that was not accepted and, in
18 fact, in the transcripts was openly mocked by some. The very
19 treatment methods that are now suggested by some were advanced
20 by Aloha many years ago, but when Aloha said this is how much
21 this will cost, it was treated as if that was some sort of an
22 insult for the customers or that Aloha would delight in raising
23 the rate a magnitude of some 100 or 200 or 300 percent.

24 The, the customers have talked about a community
25 standard, and that was something that was advanced in the last

1 rate case, and by that they mean the other utilities that are
2 around. And what I want to try to give you a sense of,
3 Commissioners, as quickly as I can, is the information that
4 you're bombarded with if you are an Aloha customer.
5 Mr. Hawcroft is a person who has filed some of this testimony.
6 He also testified in the previous case. **And he said, in**
7 response to questions from Commissioner Jacobs, "I guess I
8 would ask in my final piece for you to really seriously
9 consider denying any rate increase to this utility until their
10 service matches some of the other utilities in the area. I
11 look with pride what Pinellas has done with their systems."

12 Well, here is an article from the Tampa Tribune from
13 nine days ago that Pinellas has increased its rates in a
14 double-digit amount for five straight years, and it just
15 announced there are going to be double-digit rate increases for
16 the three years after that five-year period expires. And yet
17 in the 1999 survey that Mr. Beck just referred to, 90 something
18 percent of Aloha customers said they were against any increase
19 in rates. This is the dilemma in which Aloha has found itself
20 all these years.

21 This background put Aloha in a critical dilemma that
22 I think needs to be appreciated by the Commission. **We knew**
23 that if we spent millions of dollars on a treatment method that
24 no one can guarantee will solve the problem, Dr. Kurien
25 testified to you in your April proceeding in Pasco County there

1 were no guarantees as to any particular method, if Aloha spent
2 millions of dollars on that, then they knew that the customers
3 who do not have these water quality concerns were going to
4 challenge the prudence of those expenditures in a rate case.
5 And, in fact, rates may well be raised to customers who do not
6 receive any direct benefit from that. **The percentage in the**
7 '99 survey was that 84 percent of customers indicated they
8 would oppose any rate increase, and that has put Aloha in a
9 bind.

10 People are going to come and say this was an unfair
11 and unnecessary expenditure as to me because I did not have
12 this problem that these customers complain about. And,
13 frankly, Commissioners, I think now is the time and place to
14 say that there have been instances in the past when we have
15 attempted to request that the Commission take ownership of that
16 kind of a decision in advance, that that is what we're going to
17 do, and the Commission has refused to do so.

18 I've been told by one staff member the Commission
19 isn't in the prudence business, and I understand that, but
20 Aloha was in an extraordinary situation here. Even now there
21 are those in this testimony who suggest, well, this is common
22 sense. You could have known this in 1990 and here's something
23 that was said in 1980, and I think there's something in the
24 testimony about the 1950s. Well, anyone who knows how to
25 operate a search engine can get online and see that this is not

1 common sense; it is an emerging science, it is still being
2 wrestled with by the nation's largest public utility which
3 serves Washington, DC, and its suburbs, and they have hired
4 scientists, they are looking at it. It is a problem that the
5 solution is probably within the realm of what's being suggested
6 here, but it is still not understood why it affects one house
7 and not another.

8 The DEP witness who testified in the last rate case
9 testified that he had black water from St. Petersburg Utility
10 and his suggestion was to switch to plastic piping. When Aloha
11 suggested in proceedings years ago that switching to CPVC would
12 cure the problem, it was ridiculed. And, by the way, Aloha,
13 working with the staff, investigated the alternatives of coming
14 up with rebate programs so that people could put plastic piping
15 in their homes so that they could do a low interest loan
16 program and were never able to work it out with the staff or
17 how that could be done or how that could be recompensed under
18 the Commission's rules. Once again, any suggestion that Aloha
19 has done nothing is incorrect, and the staff recommendation
20 that despite that perception Aloha has done quite a bit is
21 correct.

22 I think that the best example of the fact that this
23 is an emerging issue and an emerging science is that this
24 Commission in 2002, after hearing a rate case in which hundreds
25 of thousands of dollars were spent on the litigation, ordered

1 that 98 percent of the hydrogen sulfide be removed from two of
2 Aloha's wells. And within a year or a year and a half Aloha,
3 the Office of Public Counsel and the customers came to you and
4 said, that's not a realistic standard and it won't work. We've
5 all been learning about this problem as the '90s have been
6 progressing.

7 The primary staff analysis is correct that despite a
8 barrage of letters to the staff and the Commissioners
9 themselves, an organized publicity campaign to the contrary,
10 the consistent criticisms of certain politicians over the years
11 and inaccurate statements in the press, which picked up on all
12 of that, Aloha has continued to make efforts in this case.

13 A brief example, Commissioner, of the type of
14 information that I'm talking about is -- maybe I'll come across
15 it. Basically there are -- there is a recent homeowner's
16 association letter, it's about three weeks old, and the same
17 article appears in several of the homeowner's associations'
18 letters of these neighborhoods, and it's filed by one of the
19 customers, who is the 19 here, and it says, "Aloha has refused
20 to give the customers any information about their water."

21 Commissioners, nobody's water has been more studied
22 than Aloha, nobody's plants have been more looked at, nobody's
23 water has been more tested, nobody's treatment methods have
24 been more microscopically analyzed. And yet if you're a
25 customer, that's what you believe when you read that, that

1 Aloha has said, forget it, we're not going to give you any
2 information. Nothing could be further from the truth.

3 Aloha has through the years considered and proposed
4 treatment alternatives to alleviate the black water, and,
5 again, some of those alternatives, which are now the ones such
6 as aeration which are widely accepted, were ridiculed at the
7 time or were said to only be advanced by Aloha to somehow
8 adversely affect the customers.

9 Aloha has performed pilot studies on solutions to
10 this issue. We are currently implementing a process suggested
11 by Dr. Levine, the USF scientist who was hired by the Office of
12 Public Counsel as an independent auditor. We accepted her
13 recommendations, we are implementing her recommendations. But
14 the fact that we have retained her to do that is now being
15 turned by some in letters to the editor and in statements to
16 this Commission as that she's somehow a turncoat. We're -- we
17 didn't hire Dr. Levine, but we've accepted what she has said,
18 we're going forward with that process now, and it is being
19 permitted, it is being studied, it is being put into place.

20 Despite the fact that this Commission expressly found
21 in a prior order that Aloha's responsibility ends at the meter,
22 Aloha has never rested on that concept. We have put a
23 significant amount of money, resources, time and effort into
24 attempting to solve this problem, and we're going to continue
25 to do so in the future.

1 One thing Aloha recently said was Aloha committed to
2 the process of mediation, we initiated the process of
3 mediation, and we are going to go forward with the process of
4 mediation even if the Commission determines not to file a
5 complaint today because it's the right thing to do. I think
6 the Commission thought back when they met in Pasco County that
7 it was something that might lead to a resolution, and we still
8 hope that it's something that might lead to a resolution.

9 I would note that the staff recommendation has said
10 that in order to find probable cause, you need to find that
11 Aloha has violated a statute, rule or order that warrants
12 imposition of a penalty. Here Aloha is in compliance with the
13 very statutes designed to categorically address the issue of
14 water quality, those promulgated by the Department of
15 Environmental Protection and the United States Environmental
16 Protection Agency. It's also in compliance with the
17 Commission's rule, and Aloha has not violated any Commission
18 order.

19 Commissioners, something else you should consider
20 when you determine whether you're going to go forward with the
21 complaint today is the ramifications of going forward. Aloha
22 owns the facilities that any subsequent utility would use to
23 render this service. That ownership will continue even if
24 certification does not. Aloha has made investments and is
25 continuing to expend money under this, the direction of this

1 Commission to address water quality concerns. If this deletion
2 occurs in the middle of those efforts, it may be that those
3 expenditures will be placed into rates but will be paid for by
4 persons who benefit from them the least, people who do not have
5 concerns about water quality.

6 Adverse effects on Aloha's remaining customers, and
7 sometimes these discussions would make you think there are no
8 remaining customers, but I'm going to get into the numbers in
9 just a second, are something that is an unknown at this point.
10 And obviously, Commissioners, Aloha will resort to every means
11 necessary in every forum necessary to prevent the deletion of
12 its territory. Given what is at stake, it simply has no
13 choice.

14 Aloha is currently moving forward on this issue,
15 implementing the scientific process that Dr. Levine has
16 suggested under the direction of the Commission. The
17 Commission will assumably remain vigilant that Aloha continues
18 to move forward. I know that Mr. Fasano said that the
19 customers wouldn't have any option if you elected not to reform
20 the hearing today. In fact, you retain all your options as
21 events unfold in the future, but there's a new treatment
22 process coming in that's being implemented right now. Aloha
23 will remain in compliance with DEP rules, it will remain in
24 compliance with EPA's rules.

25 Commissioners, very quickly, just discussing the

1 alternative staff analysis. The alternative staff analysis
2 notes that the Commission proposed action in January 1999 after
3 your staff had investigated the matter that it was not
4 appropriate to order Aloha to do anything with regard to water
5 quality. That order was protested by the customers, that
6 proposed action. After a hearing, the Commission essentially
7 made the same finding that they should not take any further
8 action regarding quality of service as to Aloha.

9 It is interesting to me that now the testimony in
10 those proceedings in which the Commission determined it was not
11 appropriate to order action with Aloha with regard to water
12 quality are being put together to say that it supports that
13 action now. And yet at the time, after the only hearing that
14 was expressly a water quality investigation, the Commission
15 determined that such action was not appropriate. We've heard
16 about mountains of evidence, but that was the case where you
17 really heard the evidence and that was the order that you
18 issued even after a hearing.

19 The alternative staff recommendation addresses the
20 issue of the survey, and there's been discussion of the survey
21 here, relying upon the percentages and not giving you any of
22 the actual numbers. In fact, Aloha has 15,000 water customers.
23 The survey went to 3,460 customers, 2000 of the customers
24 answered, and one in five of those did not favor deletion.

25 It's our position, Commissioners, that not only is

1 the survey flawed, but that the results are skewed by the fact
2 that there has been a very well organized, to some extent
3 propaganda campaign, and a misinformation campaign. And I
4 don't think, Commissioners, that to state that fact is to
5 minimize or refuse to recognize the legitimate customers'
6 concerns, but it is a fact nonetheless. There are -- there is
7 the dissemination of misinformation at Aloha. There are, there
8 are people writing letters to the editor saying that we won't
9 respond, that we won't do anything, they're continually being
10 told that we use legal maneuvering, even in a case here where
11 we are tantamount to the defendant, and yet everything that we
12 do in order to defend the charge against us is said to be a
13 legal technicality or that we're resorting to legal
14 maneuvering.

15 Even the alternative staff recommendation,
16 Commissioners, has not found a rule, a clear statute or a
17 Commission order which Aloha has violated. It has, rather than
18 taking an order and said we told Aloha to do this and they did
19 not or an administrative code rule and said it requires Aloha
20 to do this and they did not, they have taken the most generic
21 language in 367. They have then put together customer
22 complaints from several proceedings and said that that is
23 probable cause. And we suggest, Commissioners, that that is
24 misplaced.

25 Commissioners, very, very quickly, I want to address

1 a couple of things that were said. You've heard about the
2 Citizens Advisory Committee. First of all, we suggested the
3 Citizens Advisory Committee. The Citizens Advisory Committee
4 was being formed and then the Commission order came out in the
5 rate case and required us to form it. It wasn't an issue in
6 that case and we didn't know that order was going to say that.
7 When we saw that it was the subject of an order and that it was
8 requiring something that was different than what was being
9 formed, we stopped, and the order was appealed. By the time
10 the Citizens Advisory Committee was formed, the deletion action
11 was already filed. So at the time that we're being said that
12 we didn't cooperate with the customers, there was already a
13 proceeding filed to essentially decapitate the company.

14 I've only been to one of these Citizens Advisory
15 Committee meetings, but I can tell you that it was the day that
16 Dr. Levine's report had come out the day before, and her
17 report, everything good about Aloha, about its cooperation and
18 her thanking and et cetera, had been taken apart and there were
19 like three pages of about a 30-page report being passed out as
20 the report. And John Williams was there and he was red-faced
21 at the way he was treated. These committee meetings early on
22 were anti-Aloha pep rallies and they did not have to be that
23 way. They did not have to be that way, and it broke down
24 everything quite early on.

25 We certainly did not delay formation of the Citizens

1 Advisory Committee. We have not engaged in legal maneuvering
2 to avoid these problems. We have suggested solutions to these
3 problems, which were very expensive, and we are committed,
4 again, to the process that Dr. Levine has suggested that we
5 implement and to mediation. We suggest that rather than going
6 into another litigation, let us use our resources to put the
7 new process into place, to engage in mediation with the
8 customers, and to try to solve these problems in a way in which
9 the labyrinth of legal proceedings and the time and expense
10 involved therein can be avoided. And we support the primary
11 staff recommendation.

12 COMMISSIONER DEASON: I have a question for Mr. Beck.

13 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

14 COMMISSIONER DEASON: Mr. Beck, if we were to proceed
15 with staff alternative recommendation and we would, the
16 Commission would assign part of its staff, as I understand it,
17 as prosecutory staff to make the case before the Commission
18 that there should be a deletion of territory, and I understand
19 it it's your position that Public Counsel would intervene and
20 that customers would have input into that process, if at the
21 end of that process it's the Commission's decision that there
22 indeed should be a deletion of territory, what does that mean
23 in terms of continuation of service to customers, who owns the
24 assets, how are they disposed of, or is, or is -- would they
25 continue to be owned by Aloha and be licensed out to another

1 provider? Have -- what is the customers' viewpoint as to how
2 under those circumstances service would continue and who would
3 provide and under what circumstances?

4 MR. BECK: Commissioner Deason, I believe deletion
5 would have to be contingent upon another provider taking over
6 the provision of service to the customers, and I think the
7 staff recommendation mentions that there. The prefiled
8 testimony filed by the customers recognizes that.

9 Ultimately at some point there would have to be
10 action by Pasco County to, to either negotiate a, a purchase of
11 those assets from the company or to use legal process to take
12 ownership, if that's what it took. I mean, ultimately Pasco
13 County would have to be involved in some way other than what
14 the Commission can do, and the customers understand that.

15 COMMISSIONER DEASON: Do you think that Pasco County
16 should be a party to this proceeding, if we decide to adopt
17 staff's alternative recommendation?

18 MR. BECK: I think you'd have to ask Pasco County on
19 that, whether they -- previously they have, have -- it's been
20 their position they did not wish to be a party. Staff sent a
21 letter to Pasco County and they declined. They were concerned
22 that it would look like that they are trying to take over the
23 company and trying to take over their business, and they didn't
24 want to be in a position where that, that, it would look like
25 they're the ones advocating taking over the business of another

1 company.

2 COMMISSIONER DEASON: But you would agree -- do you
3 agree with staff's recommendation that there would have to be
4 assurances that there's going to be a continuation of service?

5 MR. BECK: Right. We would want -- I think the
6 customers would ask that it be contingent upon another provider
7 providing service. You don't want to just turn, you know, give
8 up their certificate without a replacement, you know, by Pasco
9 County.

10 A decision by the Commission, I believe, would be
11 very important. I mean, it would be -- not only would it be a
12 statement by the Commission that the way this company has
13 operated is inadequate and it's not meeting the type of service
14 that the Florida Statutes are, deem necessary, but it would
15 also send a clear message to Pasco County that their, their
16 citizens have a problem. A decision by this Commission to
17 delete, I think, would be very important and helpful in the
18 process.

19 COMMISSIONER DEASON: Is Public Counsel's Office in
20 agreement that the scope of the review, the area actually in
21 question that potentially could be deleted, that that is the
22 proper area to proceed forward with?

23 MR. BECK: Right. This is four -- there's four
24 different areas where customers have filed petitions. It may
25 be that the Commission should look at the entire Seven Springs

1 area as far as deletion goes. I don't think you'd want that to
2 be off the table. I mean, there have been petitions by these
3 four customers, but it's potential that you could see -- if
4 it's a management issue, that the management of this company
5 doesn't operate prudently and provide an adequate service, it
6 would seem to me that you should look at the entire water
7 operation in the Seven Springs area.

8 COMMISSIONER DEASON: But wouldn't you agree though
9 that if, if we're going to -- if the Commission were inclined
10 to expand the scope of the review, that that would have to be
11 part of the up-front notice to the company as to what actually
12 is being contemplated? That if we were to proceed with a
13 limited review and then at the hearing try to expand that,
14 don't you think we would run afoul of the very APA, which you
15 indicated we need to follow?

16 MR. BECK: Right. I think if you expanded it to the
17 end, it would be too late. You might have to institute
18 separate proceedings as far as taking over the entire company.
19 I would be in favor of looking at the entire Seven Springs area
20 from the point of view of our office. You have petitions by
21 customers in four distinct areas asking the Commission to go
22 forward. I think that's the minimum.

23 But from our office's perspective, I think it would
24 be good to look and we would support looking at the entire
25 Seven Springs area water service.

1 COMMISSIONER DEASON: Has Public Counsel made any
2 consideration of the impact on remaining customers if a portion
3 of the service territory is deleted?

4 MR. BECK: Yes, we have considered that. There's no
5 way to definitely know. There's pluses and minuses.
6 Dr. Kurien's testimony specifically addresses that in what was
7 filed. I mean, there's a number of pluses and minuses you can
8 identify. And where it finally comes down is unknowable, I
9 believe. But, you know, at the end of the day you've got to
10 ask your question, is the service that the customers are
11 providing, is this okay? You know, is it -- would it be better
12 to do nothing and let this continue, this type of service
13 they've been getting for a decade? And the answer is no.

14
15 providing to these customers and saying that's okay, because
16 that's your other alternative is to do nothing, and that's not
17 acceptable.

18 COMMISSIONER DEASON: Commissioner Edgar, you had a
19 question.

20 COMMISSIONER EDGAR: Yes. Thank you. I'm not sure
21 to whom to address this question, so I'll go through the Chair
22 and maybe you can help me with that.

23 CHAIRMAN BAEZ: Just toss it out there and somebody
24 will --

25 COMMISSIONER EDGAR: Thank you. There's been

1 testimony presented about similar water quality issues or
2 problems occurring in other service areas by other providers
3 and there's been testimony about some of the suggested
4 technologies to address the customers' concerns being emerging
5 or unproven and costing multimillions of dollars, I believe is
6 what I heard. And so I'm wondering if some of the technologies
7 that are out there and the cost estimates have been peer
8 reviewed of scientifically engineering financially as to how
9 they would, could and how much it would cost to address the
10 problems that the customers have raised.

11 MR. WHARTON: Well, the study which Dr. Levine
12 undertook for the Office of Public Counsel is a scientific
13 review of the most cost-effective method of removing this
14 particular problem. You know, it's interesting, the problem
15 hasn't always been solved through process. There are, I
16 believe, two counties in Florida that have ordinances now
17 banning copper piping in homes. But there are -- there is a
18 bit of information on the issue: There was some when it
19 started several years ago, there's more now than it was, but
20 that was part of Dr. Levine's task, which she actually
21 performed under the auspices of the Office of Public Counsel,
22 was to try to look at the different alternatives in something
23 that wouldn't be tremendously expensive. For instance,
24 aeration would be much more expensive now than it would have
25 been in 1997 or eight when Aloha first proposed it. There are

1 also land issues there. And so she attempted to do that and --
2 when she made her recommendations, I believe.

3 CHAIRMAN BAEZ: Senator, you had a comment.

4 SENATOR FASANO: I do. Thank you.

5 With all due respect to counsel, Aloha early on when
6 I first got elected in 1994 denied there was ever a problem.
7 Denied there was ever a problem. It took years before they
8 finally said, well, there is a problem, but it's going to cost
9 you \$10 million to fix the problem.

10 To suggest that copper piping is the problem, my
11 response has always been, well, let us, let us reach out to the
12 other utility companies in Pasco County and to Pasco County
13 themselves and to the City of New Port Richey whose customers
14 have copper piping to find out if they're having a dirty water
15 problem. Zero complaints. No complaints, Commissioners. And
16 this is where you focus in on Aloha that has -- well, I could
17 bring you boxes of complaints that I have received, and I'm
18 sure the same here at the, at the PSC, of providing a dirty
19 water to a person's home when nowhere else in the county is
20 that happening. So their argument that it's happening in other
21 parts or other utility companies, if it has, it's been solved,
22 as Dr. Kurien pointed out in his testimony, it's been solved by
23 that, by that utility company.

24 Again, Aloha, with all due respect to counsel, and I
25 don't know when you started on this, maybe it was ten years

1 ago, I don't remember, but certainly early on Aloha, and you
2 can look at their testimony when we, we had public hearings for
3 the rate increase, you know, eight years ago or seven years
4 ago, Aloha came in with their, with their engineers and their
5 experts and said there wasn't a problem. Look at that
6 testimony. I challenge you to do that. And now they're
7 recognizing there's a problem; they want the customer to give
8 them a chance to fix it? Those chances are far, far gone now.

9 I mean, it's just, it's just -- it baffles the mind
10 for them to suggest that this is not their problem and that,
11 and that, and that it's the customers' problem, that they
12 deliver a quality water. They do not. And I challenge you
13 again, and you being with the DEP, when you worked for the DEP,
14 I challenge you to find out where these, where these black
15 water problems are coming from. You will never find the amount
16 of complaints of black water in any other utility company, if
17 not in this state -- I mean, in the state and possibly in the
18 nation, the amount of complaints we get for black dirty water
19 on a daily basis.

20 MR. WHARTON: Chairman Baez, we are not denying --
21 once again it's been said we're denying responsibility for the
22 problem. We share -- we want to work with the customers on the
23 concerns and we want to address the concerns. We're in the
24 middle of an implementation process. What Representative
25 Fasano is -- what Senator Fasano is referring to is that early

1 on we were being accused that the black water was coming in
2 through the meter from our pipes. That is what we denied. We
3 still deny it. And I think now it's come to the point where
4 everyone recognizes that we're right about that.

5 CHAIRMAN BAEZ: Commissioner Edgar. Oh, Dr. Kurien,
6 you had something to add?

7 DR. KURIEN: Commissioners, I'd like to point out why
8 there is this difference between the two points of view. Aloha
9 is arguing from a legal point of view, the customers are
10 arguing from a scientific point of view, and it's very
11 difficult sometimes to get the two to meet. Let me explain.

12 Aloha has always maintained that its process, the
13 sole use of chlorination, is adequate to provide good, clean
14 water which will remain so in the customers' pipes.

15 And let me read you one sentence from FDEP Florida
16 Drinking Water Program Administrator to whom I wrote in July,
17 or I wrote in June of 2002. And I suggested that chlorine was
18 not able to completely convert hydrogen sulfide to sulfate and
19 left behind elemental sulfur. And he says, "I received a
20 letter on June 20, 2002. Your observation that Aloha might be
21 using inadequate methodology is correct." That is FDEP saying
22 that. And that observation was made in Pinellas County in
23 1991. It was published as an article in the American
24 Waterworks Association meeting in 1993. And that was the first
25 year in which complaints started, even though the levels of

1 copper sulfide in water was found to be higher by FDEP in 1992,
2 and Aloha was taken to task for that. **And I have provided all**
3 of that evidence in here.

4 When we brought this fact to the attention of Aloha,
5 which had itself admitted in 1996 that in the process of using
6 chlorination both elemental sulfur and sulfate is formed. In
7 1997 they completely denied it, and that is also documented
8 here. They said, "There is no elemental sulfur. All hydrogen
9 sulfide is converted to sulfate." Unfortunately, the Public
10 Service Commission picked it up and repeated it. So it found
11 itself in the situation of saying on the one hand that the
12 science was correct, but people were having problems. It is
13 not possible for the science to be correct and for people to
14 have problems. The science was incorrect.

15 In fact, Dr. Levine said Aloha needs to upgrade its
16 **process**. Yes, it did meet state standards and federal
17 standards, but it did not meet the scientific standard of being
18 able to provide water that remains stable in the customers'
19 pipes. That's where the problem is. It was brought to the
20 attention of Aloha. If Aloha had admitted that their process
21 was inadequate, they needed to move to aeration and they needed
22 help from the PSC, from the customers, nobody in their right
23 mind would have agreed to it. Instead of that, Aloha said this
24 is a political move by customers trying to put Aloha out of
25 business. They were wanting good clear water, but they didn't

1 understand why they were getting bad water. They said, we are
2 getting bad water and we don't know why. **We want Aloha to look**
3 into it. Aloha did not look into it. That is the problem.

4 Okay?

5 And it has now been brought to their attention that
6 their processing needs upgrades. **Even now they will not admit**
7 that sole chlorination, sole use of chlorination was
8 inadequate, and I will provide evidence to show that they knew
9 about it. Okay? That's the point. They knew that something
10 was inadequate but did not take the steps necessary to make the
11 customers and the Public Service aware of the fact that their
12 process was inadequate. It may be that they did not know. I
13 have serious doubts about it because their engineer is a very
14 sophisticated engineer, and I will provide his own words to
15 show that elemental sulfur is bad for water and that it'll
16 corrode pipes, it'll cause bacterial emission of the pipes.
17 So -- and that is why I have not put one word of my conclusions
18 into this. I have provided you 64 references from public
19 records to show that this was all well-known.

20 When I offered to work with them in 2002, they could
21 have simply said, here are our customers coming to work with us
22 to provide a win-win situation for both parties. **If they had**

23
24
25 Advisory Committee two days before the hearing. But when it

1 came to forming it, they delayed it and said, the PSC is asking
2 us to do more than we are prepared to do; therefore, we are not
3 going to do it.

4 CHAIRMAN BAEZ: Commissioner Edgar, did you have any
5 follow-up? And this is not your only chance, just so you, you
6 know, it's not use it or lose it. We can come back to you at
7 any time. So if you have to -- I just see you concerned over
8 --

9 COMMISSIONER EDGAR: Just for further clarification,
10 part of what I'm grappling with in my mind is this issue of the
11 technologies that are available to address the problem as it's
12 been described to us, the ability or inability of technologies
13 and whether they are proven or emerging or what state the
14 technology is. And so, again, I'm going to kind of come back
15 to the posture of my question, which is has there been
16 scientific peer review to help address that issue? And then,
17 if so, the cost of those possible technologies to address the
18 problem.

19 DR. KURIEN: Commissioner, the question of hydrogen
20 peroxide, which is the new method that they're offering, we
21 suggested a second person to look at that option whether it
22 will reduce the incidence of black water and rotten egg smell
23 in the consumers' pipes. Aloha refused to do that. We asked
24 for a second opinion. And we have asked for information about
25 the pilot study because we are capable of understanding water

1 chemistry, and Aloha has refused to provide that. And then
2 they want us to sit down and mediate when they don't give us
3 the information to understand what it is that they're doing.
4 And I talked to Dr. Levine and I said, "Are you sure that this
5 is the best method for the customers, not for Aloha? Is it the
6 best method for customers?" And the answer was, they have
7 limitations. I never realized that. But that doesn't mean
8 that the customers should suffer because of the limitations
9 that Aloha has in terms of the fact that it has no space to
10 install aeration equipment. A mile down the stream we can get
11 water which has been aerated.

12 The question then, therefore, becomes should the
13 customers suffer poor water quality so that Aloha can continue
14 in business or in the area where there is the maximum problem?
15 And this details why there are problems in some areas and why
16 there are not problems in other areas and, therefore, why only
17 a certain set of customers want deletion, because others may
18 not have a problem. And I'll grant that, because the wells
19 have different levels of hydrogen sulfide. Some wells are not
20 adequately engineered to provide complete elimination of
21 hydrogen sulfide or production of large quantities of elemental
22 sulfur. And that is the problem. It is a scientific issue,
23 can be solved by science, could have been dealt with by
24 science, but there was no willingness to address it as a
25 scientific issue. Whether it can be addressed today with the

1 onstraints that Aloha has for space and capital -- because
2 ustomers in the Seven Springs area cannot pay large amounts of
3 ost for water. I have people calling me and saying, we can't
4 even take our medications because we don't have the money. If
5 water rates go up significantly, then we'll have trouble.

6 And we have done comparative cost analysis, and I
7 have submitted that to the Public Service Commission. We have
8 done an enormous amount of work on this. Okay? And I wish
9 before we come to a conclusion we would look at this, this set
10 of documents. And we have offered to sit down with Aloha and
11 look at the issues when Aloha wanted us to sit down with
12 Dr. Levine. I wrote a letter and said we would do that, and
13 Aloha never answered that letter. Took three months to reply
14 and said, we would like to have the meeting now, after they had
15 talked to Dr. Levine for a long time and got her to agree that
16 this was the best method. We wanted a peer review of that
17 method before they even pilot studied it and they refused it.
18 And let Mr. Wharton answer whether they agreed to our request
19 or not.

20 MR. WHARTON: Commissioner Edgar, the answer to your
21 question is no. There has not been a peer review breakdown of
22 cost alternatives. The only proceeding the Commission had that
23 was directly -- this has often come up in the context of a rate
24 case or of a complaint, but the water quality investigation
25 determined at the end that the Commission was not going to

1 direct Aloha to take any further action in that regard.

2 Once again we're being accused of withholding this
3 information about Dr. Levine. Dr. Levine was working for the
4 customers when she came up with these theories and with her
5 report. So certainly all of that information was available to
6 them.

7 MS. GERVASI: And, Commissioner, if I may add, by
8 prior Commission order issued back in July of 2004, there's a
9 breakdown of what Aloha provided as very estimated costs, both
10 capital and O&M costs of the various treatment options that are
11 addressed in Dr. Levine's report, but those were very
12 preliminary numbers. And they also provided an estimated rate
13 impact of each of the treatment alternatives, with the hydrogen
14 peroxide treatment alternative being the least expensive.

15 MR. WHARTON: And, Commissioner Edgar, I'm sorry. I
16 misspoke. There has not been a comprehensive peer reviewed
17 report of different alternatives, but Dr. Levine's report was
18 peer reviewed by the University of South Florida.

19 CHAIRMAN BAEZ: Commissioner Bradley, you had a
20 question.

21 DR. KURIEN: Commissioner, if I can make one more
22 point. Dr. Levine herself said at the meeting organized by
23 Aloha that it will not improve black water problems
24 significantly.

25 CHAIRMAN BAEZ: Commissioner Bradley.

1 COMMISSIONER BRADLEY: Yes, I have -- I think my
2 question is more specific, a little bit more specific. And I
3 heard the gentleman from Aloha allude to Pinellas County, and
4 I'm from Pinellas County. And Pinellas County does not have a
5 local source of fresh drinking water, so it gets its water from
6 surrounding areas, and that's another political issue. But
7 it's my opinion that all of Pinellas County probably has water
8 that's of a high sulfur nature; therefore, it's not usable.
9 And, and I don't know what scientific method was done years ago
10 by those who preceded me as a resident in Pinellas, but I think
11 it was determined then that they probably could not clean up
12 sulfur water to the extent that it would be acceptable. And I
13 don't know if, if, if Aloha is capable of cleaning this
14 particular well up to the extent that it will ever get rid of
15 the black water. But, you know, I'm a very patient person and
16 I'm willing to see what the end result might be as it relates
17 to a scientific application, if, in fact, that's what's deemed
18 as being necessary.

19 But my question is this, and this is to staff. Have
20 we as a Commission ever been confronted with black water as an
21 issue that existed between customers and another regulated
22 water company?

23 MS. GERVASI: Yes, sir. And my research has revealed
24 at least one other order that reflects a black water problem
25 that was occurring in a regulated company, and it occurred in

1 St. Johns County back in 1988. And in that case during a
2 customer meeting customers complained about the odor and the
3 taste of the water and pinhole leaks in the copper piping. The
4 COMMISSIONER at the time concluded that the potable water was
5 satisfactory, and the Commission found that the source of the
6 problem appeared to be within the individual distribution
7 system, with each customer's problem originating beyond the
8 meter within that system. And the Commission cited to both
9 Rules 25-30.225 and 25-30.210, which discuss the utility's
10 responsibility being up to the delivery to the customer's
11 meter, but found that that was not to suggest that the
12 corrosive nature of the water should be ignored.

13 That utility hired a consultant from the University
14 of Florida. This was North Beach Utilities, Inc. They
15 proposed a plan of action to improve the quality of the water
16 service, which involved the oxidation of most, if not all, of
17 the hydrogen sulfide. But in that case the customers supported
18 the proposal and in that case the company was willing to
19 initiate corrective action.

20 There was another case back in 1989 --

21 COMMISSIONER BRADLEY: Okay. You said that the
22 company was willing to implement corrective action?

23 MS. GERVASI: Yes, sir.

24 COMMISSIONER BRADLEY: Did corrective action occur
25 and, if so, what was the corrective action? And is -- have we

1 had any feedback here recently from the customers that would
2 indicate to us as to their satisfaction with or their
3 dissatisfaction with the water that they're receiving?

4 MS. GERVASI: I don't know the answer to your
5 question because there is not documentation that I was able to
6 find beyond the issuance of that order that required the
7 company to go out and initiate the corrective action. So --

8 COMMISSIONER BRADLEY: Is that water company still in
9 existence today?

10 MS. GERVASI: That's the St. Johns County --

11 MR. MELSON: Commissioner Bradley, if I might.
12 St. Johns County took back jurisdiction from the Commission a
13 number of years ago. So whether they're still in existence or
14 not, that would be something that the St. Johns County
15 Commission would be hearing; we would not be hearing.

16 COMMISSIONER BRADLEY: So basically we have no
17 information to -- well, there's no information that we can use
18 right now to make a determination as to what really happened in
19 that particular instance. We don't know if the customers are
20 still being served by that particular well or if the county has
21 taken over and switched them to a subsequent well. Is that an
22 adequate assumption?

23 MS. GERVASI: No, sir. I don't believe we do have
24 that information. I wasn't able to find it.

25 COMMISSIONER BRADLEY: We attempted to, as a

1 Commission, to do a survey, and for some reason I never did get
2 the end results of that survey. Was that survey completed as
3 it relates to -- we surveyed Aloha's customers.

4 MS. HELTON: Yes, sir, we did. And the survey
5 results are -- I think we gave a deadline of the middle of
6 December, beginning of December, and Mr. Stallcup is the staff
7 member who compiled that and he has that data.

8 COMMISSIONER BRADLEY: Okay. Well, let me ask this
9 question.

10 What percentage of Aloha's customer base has a
11 problem with black water? Is it the entire customer base or is
12 it 20 percent, 30 percent, 50 percent, 10 percent? Do we have,
13 do we have that data?

14 MR. STALLCUP: The survey did not go out to all of
15 Aloha's customers, Commissioners. They only went out to the
16 customers in the four petitioning areas. And of the customers
17 who responded to our survey, 64 percent indicated they had a
18 black water problem.

19 COMMISSIONER BRADLEY: Okay. Would you -- can you
20 give me a hard number -- what percentage of your customers,
21 customer base --

22 MR. WHARTON: I can, Commissioner. This is the --
23 well, I don't think anyone knows.

24 COMMISSIONER BRADLEY: How many customers do you
25 have?

1 MR. WHARTON: We have 15,000 water customers.

2 COMMISSIONER BRADLEY: And how many of your customers
3 have complained about black water?

4 MR. WHARTON: That have actually complained to Aloha?
5 See, it's hard to quantify, Commissioner. But I think the
6 percentage, for instance, would be much lower than the survey
7 in terms of the complaints that we've received from different
8 individual customers. I don't have an exact number for you.
9 But we have 15,000 customers, and there were six -- there were
10 2,092 responses to the survey.

11 COMMISSIONER BRADLEY: How many?

12 MR. WHARTON: 2,092, and 1,670 said that they
13 supported deletion, which is about 13.9 percent.

14 COMMISSIONER BRADLEY: Okay. Senator Fasano.

15 SENATOR FASANO: And maybe staff can help me. How
16 many surveys were mailed out? They were not mailed to all
17 15,000 customers; is that correct?

18 MR. STALLCUP: That's correct, Senator. We sent out
19 approximately 3,500.

20 SENATOR FASANO: 3,500. And how many were returned?

21 MR. STALLCUP: Approximately 2,000.

22 SENATOR FASANO: And of that percentage -- may I --
23 and, Commissioner, I apologize for --

24 CHAIRMAN BAEZ: No, that's okay.

25 SENATOR FASANO: May I ask what percentage wanted

1 deletion?

2 MR. STALLCUP: 80 percent.

3 SENATOR FASANO: 80 percent of the people that
4 responded. And it was an overwhelming response. I wish we'd
5 get that kind of a turnout in an election. But as you can see,
6 Commissioner Bradley, an overwhelming amount. And, and I would
7 suggest that if you went out to all 15,000 customers, that you
8 would get a very similar response as well.

9 COMMISSIONER BRADLEY: And one other question. I'm
10 trying to get the spirit or the tenor of Aloha's approach to
11 this. You made your statement earlier that through every means
12 and in every forum necessary, and I took that to mean that
13 Aloha will use every means and every forum that's necessary in
14 order to maintain this customer base.

15 MR. WHARTON: That's correct.

16 COMMISSIONER BRADLEY: And I was hoping that what you
17 meant by that statement is that Aloha will use every means and
18 every forum that's necessary in order to satisfy its customer
19 base.

20 MR. WHARTON: Well, we're doing that now,
21 Commissioner. We're trying. And this is a serious drain,
22 these efforts, these litigation; for instance, the attempt that
23 we're supposed to negotiate with customers who are attempting
24 to destroy the possible financial viability of the utility
25 simultaneously.

1 In 1998, after studying these problems and all
2 the alternatives, not peer reviewed but studying internally all
3 the alternatives extensively, we wrote a letter to the
4 Commission and said, here's what we propose, aeration. If we
5 can come up with some kind of a proceeding where we don't get
6 those costs disallowed on the back end, if we can somehow come
7 in, say here's the study -- and the Commission declined, issued
8 an order saying we're not going to do that.

9 So Aloha has offered to step up to the plate on this
10 in a major way, and it's what we're doing right now by
11 implementing Dr. Levine's study.

12 COMMISSIONER BRADLEY: You know, someone --

13 MR. WHARTON: We don't want to get into those
14 litigations, Commissioner.

15 COMMISSIONER BRADLEY: Someone once -- a wise old
16 person once made a statement to me that goes like this: "If
17 you find yourself in a hole, stop digging." And I'm just
18 trying to figure out how the digging stops and the solution
19 kicks in, because the hole is getting deeper and deeper.

20 MR. WHARTON: In, in all seriousness, Commissioner,
21 to address the essence of what you're saying, we're not going
22 to stop digging while there's a deletion proceeding against us.
23 It's a legal proceeding. And if we do nothing, the territory
24 will be deleted. We've been vilified for using legal
25 technicalities in a case in which we're the defendant. We're

1 not the plaintiff here.

2 COMMISSIONER BRADLEY: In my opinion as it relates to
3 me you have not been vilified, but the customers have a
4 legitimate complaint as it relates to the nature and the
5 quality of their water. And I --

6 MR. WHARTON: I don't disagree with that.

7 COMMISSIONER BRADLEY: Well --

8 MR. WHARTON: Well, I do about the vilification part.

9 COMMISSIONER BRADLEY: And I hold DEP in high esteem.
10 By all means, I respect all the statutes and the rules that --

11 COMMISSIONER DAVIDSON: You drafted.

12 COMMISSIONER BRADLEY: -- are in place as a result of
13 the dealings that have occurred, that have occurred in this
14 state as it relates to the nature and the quality of water.
15 But it still is unacceptable if it -- to say that water is
16 clean and it does not smell clean and it does not taste like
17 clean water. You know, it may not be chemically impure, but it
18 still is offensive. And what I would like to see is for these
19 customers to be provided with water that's not offensive as it
20 relates to smell or taste and not just not offensive as it
21 relates to the chemical interaction that it may have with their
22 bodies. And I'm trying to figure out how we get there.

23 MR. WHARTON: And we're in the middle of a \$4.5
24 million proposed solution. When I say we're in the middle,
25 we're, we're implementing that now, Commissioner Bradley. And,

1 again, that's to address the issue of water quality between the
2 meter and the tap, which the Commission has issued an order
3 saying it's not our responsibility, but we're doing it anyway.
4 And certainly we're going to come to you at some point with
5 those costs.

6 COMMISSIONER BRADLEY: And I cut staff off and maybe
7 staff was getting ready to give me the results of some other
8 studies that have been done that might give us some indication
9 as to how this has been resolved in the past, and I'm sorry.

10 MS. GERVASI: Commissioner, my research did not
11 reveal what the solutions actually were in the specific cases.
12 There was one other case that involved a utility in Pasco
13 County where some customers complained of a rotten egg odor.
14 This was back in 1989. And the Commission found back then that
15 hydrogen sulfide gas is commonly found in Florida's
16 groundwater. But in that case, the Commission found that the
17 utility controlled the problem principally through chlorination
18 and that further control measures in that case were not viewed
19 as cost-effective for that utility system.

20 In the Aloha case, the Commission has found by prior
21 order that chlorination in and of itself has not proven
22 effective.

23 MR. WHARTON: And, Commissioner Bradley, I just want
24 to make one thing perfectly clear, and that is we started
25 saying this years ago and I'll say it right now as clearly as

1 possible, that there are those who don't like our proposed
2 solution even though we hired their expert. We can all go sit
3 in a big room, and when we come out of that room, if the Public
4 Service Commission and the customers agree this is the solution
5 and these expenditures on that solution are prudent, we will do
6 it. We will do it. We've been saying that for years.

7 MS. HELTON: Mr. Chairman and Commissioner Bradley,
8 it's my understanding that Mr. Walden, one of our staff
9 engineers, may have some information with respect to
10 Commissioner Bradley's question that the legal staff didn't
11 have.

12 SENATOR FASANO: Commissioner Bradley, if I may.

13 CHAIRMAN BAEZ: Mr. Walden, hold off a second. Go
14 ahead, Senator.

15 SENATOR FASANO: I'm sorry. I apologize.

16 CHAIRMAN BAEZ: No. No. Go ahead.

17 SENATOR FASANO: Just to touch on that point of what
18 counsel said, to reiterate what I, what I told Commissioner
19 Edgar earlier, Aloha denied there was ever a problem for years.
20 Also for what the counsel said earlier about going along and
21 doing everything that you as the Commissioners and prior
22 Commissioners ordered them to do, I will tell you that's not
23 true. There's a refund out there that they have refused to
24 return to the customers, there are impact fees that they were
25 told to raise impact fees and charge, charge, and they didn't

1 lo that, and there's still money that's never been accounted
2 for for a few years ago. They continually denied there was a
3 problem. From day one when I met with Mr. Watford after I got
4 elected he told me there was no problem. And it wasn't
5 until -- you talk about digging a hole. It wasn't until that
6 hole got so deep they finally said we have a problem here,
7 because they saw their business being taken away from them.
8 Isn't it sad we've had to come to that extreme? Isn't it sad
9 the tax dollars that have been spent and the time that has been
10 wasted before this Commission and the staff because it took
11 them more than almost ten years to finally say there was a
12 problem, but in order to fix the problem, it's going to cost
13 the customers a 400 percent increase in rates, to use scare
14 tactics so the customers wouldn't pursue it any longer?

15 The alternative is to turn it over to Pasco County.
16 That's the easy solution. We talk about common sense today.
17 Common sense is to turn it over to a utility company that has a
18 record of delivering clean water and good service, and that's
19 Pasco County, which I believe will be willing to take this over
20 if you go with deletion.

21 MR. WHARTON: See, there you have it. Seven years
22 ago we made a proposal, but the rate increase that was
23 attendant to that proposal is being described as a scare
24 tactic. Seven years ago.

25 SENATOR FASANO: That rate increase seven years ago

1 was not to fix the problem. It was to fix your pocketbooks.

2 CHAIRMAN BAEZ: And kindly, gentlemen, that's not
3 what we're talking about today.

4 Commissioner Davidson, you had --

5 COMMISSIONER DAVIDSON: A few questions for, for
6 General Counsel. And I'll start with I just think everyone,
7 Commission, public, customers and, yes, the company, want these
8 issues resolved and want the problems fixed. The company has
9 no objective interest in not wanting to provide good service.
10 I mean, that's what companies do. And the customers want good
11 service, and there are clearly sort of issues out there that
12 have to be addressed.

13 But I wanted to ask our General Counsel about some of
14 the assumptions I'm making in considering how to vote on these
15 recommendations.

16 One assumption is, is that this proceeding, if
17 primary staff rec is voted out, we know what the outcome will
18 be. If the alternate staff is voted out, there would be some
19 type of, of new proceeding. Assuming for the minute that
20 alternate staff was voted out, the nature of that proceeding,
21 this probable -- this show cause proceeding is not a
22 forward-looking proceeding as to what should be done, what
23 additional corrective measures are needed, how, you know, which
24 of these procedures are best. It would be solely focused on
25 looking backwards; is there some violation of a law, rule or

1 order for which the show cause issue would be, the show cause
2 order would be issued? Is that correct?

3 MR. MELSON: Yes, sir. The show cause order would be
4 backward looking. Whether the company, you know, in defense
5 might choose to argue that there have not been past violations,
6 and in any event to the extent we've got customer concerns,
7 those could be solved on a going-forward basis. I could see
8 that coming into the proceeding.

9 But the, the main focus would be license revocation.
10 Is there something in the past that occurred that violated a
11 statute that warrants revocation or some other lesser penalty?

12 COMMISSIONER DAVIDSON: My one, one -- one concern I
13 had is that the -- if this, the alternate was voted out, that
14 whatever that proceeding is does not morph into some type of
15 sort of additional expedition and then sort of have loose
16 boundaries as to scope and sort of focus on things that are
17 meant for other proceedings. I mean, the way I'm looking at is
18 from the point in time we're looking back, is there something
19 that -- is there some violation we're trying to address?

20 Another assumption is that we should not just sort of
21 simply import the closed docket into a new docket like we were
22 bringing some, you know, favorite into a new Internet browser.
23 I mean, there are different rules that govern and a different
24 burden of proof.

25 MR. MELSON: Yes, sir. And that was the reason,

1 Frankly, the prior recommendation that you voted on was to
2 close the old docket so that this would be a fresh start. To
3 the extent there is information that's been developed in the
4 past that's relevant, we would have to find a way to get it
5 into this record that complies with the evidence code and
6 complies with the standard of proof. But I view it as a new, a
7 new venture.

8 COMMISSIONER DAVIDSON: The recommendation
9 articulates a primary analysis and an alternate analysis, and
10 just as one Commissioner, I always appreciate having those
11 options and it's good. If you have three options, that's good;
12 four, that's good; if only one. But I want to put you on the
13 spot here and say not so much of those two options, you know,
14 which would be your druther, but as General Counsel of the
15 agency you see two options there. Are both of those options
16 that were crafted by your legal staff, I guess, working with
17 the policy shop viable, legally sound options that could be
18 pursued by the Commission?

19 MR. MELSON: Yes, sir. I believe they're both
20 legally sound. There is no -- we could not find controlling
21 precedent, let's just say, you know, with 100 percent certainty
22 if you go down one path versus the other, there's not going to
23 be a challenge to it. But I think we've got a substantial
24 good-faith basis for proceeding on either path.

25 CHAIRMAN BAEZ: Commissioner Deason, did you have

1 questions? Because I have some follow-ups on, on the theme
2 that Commissioner Davidson was touching on. I don't know if --
3 you can go ahead and --

4 COMMISSIONER DEASON: Well, I earlier had asked the
5 question and -- concerning if we were to proceed with the
6 alternate recommendation, the scope of that, because it seems
7 to me that we've got to set out, if we go that path, we've got
8 to set out very specifically what is the subject of a potential
9 deletion and that we can't, once we get in that, add to or take
10 away from. It's either -- you know, you either delete it or
11 you don't.

12 And I guess my question to staff is your
13 recommendation is to define the four specific areas as the
14 subject of the deletion proceeding; is that correct? And what
15 was the basis for that being included? Because it was the
16 subject -- it was the amount -- the area that was the area in
17 the previous proceeding that the customer, that we opened at
18 the customers' behest?

19 MS. HELTON: Yes, sir, in part. It's also staff's
20 understanding that those particular discrete areas are the
21 areas in which there have been the highest instances or maybe
22 the only instances of black water concerns.

23 COMMISSIONER DEASON: Okay. And maybe, if I could
24 ask Mr. Beck, do you agree that that's what we should focus on
25 going forward is those four specific areas?

1 MR. BECK: Yes. Commissioner, we gave thought to
2 that ahead of time, and we're satisfied with going forth on
3 those four discrete areas. I think logically if you see this
4 as a management problem, it should include the entire
5 Seven Springs area. But by focusing on these four discrete
6 areas, you address the concerns of the customers who filed
7 petitions. There's already been a significant amount of work
8 done. For example, the survey was done of these four discrete
9 areas, so it made sense to go forward, I think, with that. And
10 that's satisfactory to us. If the Commission wished to go
11 forward on the whole Seven Springs area, this would be the time
12 to do it, and we would certainly support that as well.

13 CHAIRMAN BAEZ: Commissioner Davidson, I know you
14 signaled that you had a question, but we -- if you'll indulge
15 me for a moment. We did have Mr. Walden on hold unfortunately,
16 and --

17 COMMISSIONER DAVIDSON: Oh, okay. Sorry.

18 CHAIRMAN BAEZ: -- he does have some information that
19 may help us in the consideration. Mr. Walden?

20 MR. WAHLEN: To my knowledge, there's very little
21 information available on the hydrogen sulfide issue in terms of
22 what works best to fix the problem.

23 As Mr. Wharton spoke earlier today, there's been a
24 fairly recent problem in the Washington, DC, area with
25 discolored water and pinhole leaks in pipes, and that problem

1 is being investigated from what I've seen in some of the
2 journals. The conclusion as to exactly what's the problem,
3 what's going to be done to fix it, I haven't seen anything
4 along that line.

5 I think we all know that hydrogen sulfide is a
6 problem that exists in drinking water in various regions, not
7 only in the state of Florida, but in the country. There are
8 various methods that are used by water companies to combat the
9 problem. Aeration is very common and it works with varying
10 degrees.

11 But rather than, excuse me, getting into a discussion
12 of that, I think the question that came up today was in terms
13 of peer review and the hydrogen peroxide treatment that's being
14 proposed by Dr. Levine. In reviewing the material that, that
15 I've seen from Dr. Levine, she did a pretty thorough
16 investigation. And there are some circumstances concerning
17 Aloha and its provision of water supply, and what I'm talking
18 about is Aloha, Aloha's wells are on fairly small pieces of
19 property. They're not isolated where a retrofit to provide
20 aeration would work because the land area is just not
21 available.

22 Dr. Levine looked at a variety of options, and she
23 determined that hydrogen peroxide would be the best approach.
24 The problem with that, as Dr. Kurien pointed out and others,
25 other customers have pointed this out too, there's very little

1 data on hydrogen peroxide treatment of drinking water in terms
2 of controlling or taking care of the hydrogen sulfide issue.
3 And I think that's the -- that's what Dr. Kurien was talking
4 about in terms of the scientific review.

5 CHAIRMAN BAEZ: Thank you, Mr. Walden. Commissioner
6 Davidson, you had a question.

7 COMMISSIONER DAVIDSON: Just one short follow-up or a
8 1.5 follow-up to Commissioner Deason's question and then to
9 Mr. Walden's comments, and this is for General Counsel. If the
10 alternate was voted out, in delineating the scope, wouldn't the
11 scope be a function of two things? One, the scope of the
12 certificate at issue, and I don't know if there's one
13 certificate to Aloha or different certificates or different
14 territories, but wouldn't, wouldn't the scope be limited to the
15 scope of the certificate, and then the scope of whatever
16 alleged violations would be sort of the basis put forth for the
17 revocation? And I ask this question in response to Mr. Beck's
18 concern with, well, if we have concerns with overall
19 management, to me those types of broad concerns are not
20 relevant to this particular revocation proceeding.

21 MR. MELSON: Let me answer two ways. I think you're
22 right, you would be limited. I think in issuing a show cause
23 order saying you've got probable cause to believe a violation
24 exists, that you need to focus on the areas where your
25 investigation shows that there has been a problem. And, and

1 taff has really --

2 COMMISSIONER DAVIDSON: A problem or a violation of a
3 aw, rule or --

4 MR. MELSON: A violation of the statute.

5 COMMISSIONER DAVIDSON: Okay.

6 MR. MELSON: In the draft show cause order the
7 statute is, is fairly broad and requires that service be not
8 less sufficient than is consistent with the reasonable
9 operation of the utility in the public interest. Both in the
10 alternative recommendation and the proposed show cause order we
11 list failure to improve on customer relations as one element
12 along with, you know, failure -- the unacceptable color, taste
13 and odor, failing for over eight years to take corrective steps
14 and failing to improve customer relations. The reason we're
15 recommending you include that in a show cause order is to the
16 extent that you ultimately believe that's relevant to the
17 overall public interest, we want to be sure that we've alleged
18 that that can constitute a violation of the public interest
19 standard.

20 But when you take a step back -- that alone not
21 coupled with sort of the, the severe complaints about black
22 water led us to conclude that we should not at this point
23 recommend to you that you look at other areas of the
24 certificate.

25 COMMISSIONER DAVIDSON: The -- this -- and one final.

1 This discussion of hydrogen peroxide and corrective treatments
2 and questions regarding Aloha's wells, I mean, as I hear that,
3 those are important issues we have to think about in the
4 context of this entire case. But, again, those corrective
5 measures, those -- are those relevant or not to this
6 proceeding?

7 MR. MELSON: I think they might be relevant in
8 mitigation. If you found after a hearing that the utility had
9 violated the statute but that they were now taking proactive
10 steps to address the problem, you might conclude that despite
11 the violation, revocation is not an appropriate remedy.

12 CHAIRMAN BAEZ: Commissioner Bradley.

13 COMMISSIONER BRADLEY: Yes. I, I want to go back to
14 a little bit more discussion about the science and, and tie
15 that into some of the regulatory outcomes. And first of all,
16 I'd like to preface my statement with this statement. Just
17 based on -- based upon what I've heard staff say today, it
18 would appear to me that what we're dealing with is uncharted
19 territory which is going to require a lot of thought and some
20 courage in order to get into, get into some areas that we're
21 not sure about how to, to deal with.

22 And this sole issue of hydrogen peroxide, my
23 question -- well, my statement is a what-if question or
24 statement. If hydrogen peroxide cleans up the problem, then we
25 have, in my opinion, an excellent outcome. But what if it

1 doesn't? If it cleans it up, I can imagine that the customers
2 would give some consideration to participating in, in the
3 process of reimbursement. But if it doesn't work, I can
4 imagine that the customers are not going to be very receptive
5 to participating in, in the cost of, of a scientific method
6 that did not bring about a desirable result.

7 What is Aloha's position; what if it does and what if
8 it doesn't? I mean, I can imagine what you will, what your
9 position would be if it works, but what if it doesn't work?

10 MR. WHARTON: Well, first of all, Commissioner
11 Bradley, your question raises several interesting points
12 because what if it does work, but meanwhile the Commission has
13 deleted those territories? Then, you bet, people who don't
14 have a problem are going to come in and say, why the heck did
15 you do that?

16 But let's go back to the assumption that those
17 territories are still in the service area. If it doesn't work
18 and people still have a concern, then we're all going to need
19 to continue to work on the problem. We're optimistic that it
20 will work. Obviously Dr. Levine's the expert, not me. But,
21 again, this challenge, this charge that we do nothing unless we
22 are ordered to do it, there's an example of where we're taking
23 that risk in the face of criticism, we're trying to move
24 forward at the exact time that we're in a fight for our
25 collective life. Obviously these things aren't easily done

1 side by side. But Dr. Levine believes it will help the
2 problem, we've decided to implement it, and we hope the results
3 are good. And obviously we will come in at some point with the
4 costs. But if it doesn't work, then we're just going to have
5 to continue to work on the problem. If it does work and the
6 very neighborhoods that it was intended to benefit the most are
7 still part of Aloha's territory, then you're right, we've
8 reached a good solution.

9 Commissioner Davidson asked a question earlier which
10 sort of -- it wasn't really in his question but sort of jogged
11 in my mind that filing the complaint today is sort of like
12 giving up on the solution because it's so difficult to be
13 implementing a multimillion dollar solution while at the exact
14 same time an administrative proceeding is occurring to delete
15 those very neighborhoods out of the service area.

16 COMMISSIONER BRADLEY: Well, I don't think that the
17 complaint would be one that could not be -- it wouldn't be one
18 that would be irrevocable, would it?

19 MR. MELSON: No, sir. At some future point in the
20 proceeding if you decided continuing forward was not
21 appropriate, you could essentially dismiss your own complaint
22 at that point.

23 COMMISSIONER BRADLEY: And it's my, it's my
24 impression that the complaint just allows us to keep everything
25 alive.

1 MR. WHARTON: Although, Commissioner Bradley, if you
2 issue the order, say, in May, that's the order. I mean, yes, I
3 would turn that paradigm on its head and say if you choose not
4 to go forward today and you choose to tell Aloha "do this, this
5 and this" and part of it is to implement Dr. Levine's process,
6 you won't foreclose any of your options of filing the complaint
7 this summer. But the order is going to come out -- it takes
8 time to determine how quickly these processes, and obviously
9 you have to get out and talk to people and gather information
10 and data and --

11 COMMISSIONER BRADLEY: You know, I would, I would
12 rather not have the Commission put itself in the position of
13 telling you what to do in order to solve your business problem.

14 MR. WHARTON: Well, we're already doing that.

15 COMMISSIONER BRADLEY: I think that's something that
16 you as a member of the private sector should do on your own.
17 Because if we tell you to, to implement a certain scientific
18 process and it does not work, then I think that we probably are
19 micromanaging you to the extent that you probably might feel as
20 if we've given you bad business advice.

21 MR. WHARTON: I understand what you're saying,
22 Commissioner Bradley. Although, again, as I argued earlier, I
23 think we've got a unique case here where it was reasonable for
24 us to try to get the Commission to come on board before we
25 expended those monies, and the Commission has declined to do

1 that.

2 So, again, we've chosen to go forward with Dr.
3 Levine's process, which is more than just a process designed to
4 treat black water, but which we hope will have a good result.
5 And that's something that the Commission hasn't dictated to us.
6 We've determined to go forward, even while at the same time the
7 customers are moving to delete some of the nicest, newest
8 neighborhoods out of the service area.

9 CHAIRMAN BAEZ: Let me, let me ask a question here
10 real quick while it's fresh in my mind. This goes to, to
11 Mr. Beck. You heard Mr. Melson comment on the propriety of
12 remediation as, as mitigation in terms of a deletion proceeding
13 or revocation proceeding. Do you agree with what Mr. Melson
14 said?

15 MR. BECK: Commissioner, that would be up to Aloha to
16 raise that in defense to the complaint.

17 CHAIRMAN BAEZ: Yeah, I know. That's not what I
18 asked. I didn't ask whether they were going to raise it or
19 not. I'm not a betting man, but I'm fairly certain it might
20 sound something like that.

21 I'm asking you do you, do you agree or disagree that
22 mitigation as a concept is appropriate in the context of a show
23 cause proceeding? Could you see it, could you see it getting
24 discussed?

25 MR. BECK: Let me give you an analogy to a criminal

1 proceeding where you have a guilt or innocence phase and then
2 you have a sentencing where you look at items in extenuation or
3 mitigation. I think Aloha could raise -- if it were to fix the
4 problem, it could raise that in a mitigation phase.

5 CHAIRMAN BAEZ: Let's speak plainly, Mr. Beck. I
6 mean, I think, I think Mr. Melson created a scenario. And I'm
7 not -- again, I'm not trying to nail you down before you've
8 got, before you have your say, assuming certain decisions and
9 so on. But, but is there, is there a discussion, is there a
10 discussion to be had, again, assuming that Aloha does the
11 prudent thing, continues with their, with their remediation to,
12 to the -- I mean, all of these things, at the end of the day is
13 there a place for discussion of mitigation, and it may not be
14 enough, but --

15 MR. BECK: Certainly, Commissioners. What the
16 customers want is the problem fixed. You know, they're not
17 interested in legal proceedings. They want clear, good water.

18 CHAIRMAN BAEZ: Is, is that, is that a fact?

19 MR. BECK: Yes.

20 CHAIRMAN BAEZ: You speak for the customers. See --

21 MR. BECK: They want good water. That's what they
22 want.

23 CHAIRMAN BAEZ: And here are the things, and I
24 apologize because I'm trying, I'm trying to reconcile the fact
25 that there are two dockets going on, that there is an

1 expenditure, I'm sure we can all agree. Let's not even --
2 let's not get into arguments over adequacy or not, but I think
3 we can all agree that there are expenditures being made at
4 remediation. And I have a question on that that I will put
5 out.

6 Is there -- is the appropriateness of the hydrogen
7 peroxide treatment at issue in any docket?

8 MR. WHARTON: It's a compliance point issue really,
9 where to measure compliance.

10 CHAIRMAN BAEZ: It's not the science of it that's at
11 issue; is that everybody's understanding?

12 MR. WHARTON: It's not the, it's not the process
13 itself.

14 MR. BECK: Let me -- Commissioner, there's a --

15 CHAIRMAN BAEZ: No, not in this docket. Not in this
16 docket.

17 MR. BECK: Right. There's a protest of the order in
18 the, in the rate case order about how do you test, you know,
19 for hydrogen sulfide, where you do it and how often and so
20 forth.

21 Let me mention that the chlorination process, as I
22 understand it, is largely driven by Aloha's interconnection
23 with Tampa Bay Water, and they have to do this. It's not
24 driven by bad water. They have to so they can interconnect
25 with Tampa Bay Water. There's a whole other -- there's a lot

1 of facts that haven't been brought out here.

2 CHAIRMAN BAEZ: There's a lot of reasons why this --
3 and perhaps I'm using the wrong term and I can stand
4 corrected -- but that, that whatever this \$4.5 million project
5 that Mr. Wharton alluded to, that there may be a lot of other
6 reasons, but is one of the reasons or one of the outcomes of
7 that is that the black water issue or the hydrogen sulfide
8 issue is going to get potentially solved, I guess? Is that
9 recognized as some potential solution?

10 MR. BECK: Let me ask the person with the credentials
11 to address that.

12 DR. KURIEN: Yes. There is a serious scientific
13 concern that this process may not work. Dr. Duranceau, who is
14 on the ad hoc committee of Pasco County, came out at the last
15 meeting and said he did not think FDEP would approve this
16 because it has not been used anywhere else before, and unless
17 there is some very, very good data, FDEP is not going to
18 approve it.

19 CHAIRMAN BAEZ: Okay. Let me stop you. You've given
20 me, you've given me enough of an answer. Now I have a
21 question.

22 Assuming, assuming mitigation becomes part of,
23 potentially part of a hypothetical show cause proceeding, does
24 that -- is the appropriate -- would the appropriateness of the,
25 of the remediation be at issue? Would we be arguing -- I mean,

1 to the extent that we have to consider whether there's
2 mitigation to go forward, to go as far as revocation, the
3 minute we start discussing that or considering that, do we, do
4 we put at issue the project itself, the mitigation itself?

5 MR. MELSON: Commissioner, that probably depends on
6 how, if and how Aloha brings the issue into the case. I guess
7 I don't see this -- at this point sitting here I don't think
8 this ought to develop into a case about what the right solution
9 is. It would -- it might develop into a case as has the
10 problem been solved, is a solution being worked on?

11 CHAIRMAN BAEZ: And I would agree with you. I would
12 agree with you on that.

13 MR. MELSON: And that's sort of the best answer I can
14 give.

15 CHAIRMAN BAEZ: Okay. And then one last, one last
16 question, Mr. Beck, maybe one last question of Mr. Beck. You
17 have mentioned -- I think you've used the term "prefiled
18 testimony" several times. We know, we know now after
19 Item 5 that technically that's not, that's no longer, that's no
20 longer true. But it does raise the question in my mind, what
21 is your contemplation for the use of that stack of papers that
22 you have there?

23 MR. BECK: The proposed, proposed show cause order
24 that would be issued if you adopt the recommendation refers to
25 that testimony.

1 CHAIRMAN BAEZ: Again, based on assumptions -- I'm
2 sorry?

3 MR. BECK: The findings of fact section of your show
4 cause order refers to that testimony. Now whether we would
5 have to refile it or simply file a motion to ask you to accept
6 it -- I believe it's our intention that that would be used in
7 the new proceeding, you know, all of it.

8 CHAIRMAN BAEZ: And -- but -- and I, I want to
9 understand because there was some discussion of, of the
10 treatment or rather Commissioner Deason had, had questions on
11 the role of the customers, if, if, albeit through Public
12 Counsel, if that's, if that's the way it goes. Is it, is it
13 your understanding ultimately that, and I think there's a case
14 that speaks to it, that the third parties, presumably the
15 customers would offer whatever in support of whatever result
16 they wanted absolutely, but is it your understanding or your
17 acceptance of the reality that since it's the Commission
18 staff's, the prosecutorial staff's burden to carry --

19 MR. BECK: Right. Yes.

20 CHAIRMAN BAEZ: -- that they ultimately bear the
21 responsibility for picking and choosing what the best case
22 and/or testimony --

23 MR. BECK: Right.

24 CHAIRMAN BAEZ: -- and/or information? Is that the
25 way that you see that information that you hold being

1 incorporated into the --

2 MR. BECK: Yes. I -- again, it would be up to staff
3 to file its case. How they would do that would be up to staff.
4 I would -- it would be my understanding you would have a time
5 for intervenors to file testimony just like in any other case.
6 To the extent that we thought there should be other information
7 other than what staff chose to present, we would do so.

8 So the staff might use its own witnesses, it might
9 call the customers itself, it might prefile the testimony that
10 we've already prefiled. That would be fine. But that's up to
11 staff.

12 CHAIRMAN BAEZ: Right.

13 MR. BECK: But we would augment it to the extent we
14 thought necessary or proper as an intervenor and as the
15 customers wish to. So, see, different phases.

16 CHAIRMAN BAEZ: Fair enough. Okay. Commissioner
17 Bradley, you had a question.

18 COMMISSIONER BRADLEY: Yes, just to get something
19 clear in my mind.

20 Well, I would be in favor of only including that
21 portion of Aloha's service territory that's problematic.
22 Because I think that if we bring in, if we deal with the entire
23 territory, we're going to get a distorted, have a distorted
24 discussion because there's some customers who were not affected
25 by black water, so they would have one opinion as compared to

1 those who are adversely impacted by black water. So I would --
2 that's why I asked earlier, what percentage of -- I asked for a
3 hard number as it relates to the number of customers who
4 actually have this black water problem. **And I kind of was**
5 surprised that Aloha couldn't tell me. I would think that, you
6 know, your recordkeeping would allow you to break out in hard
7 numbers, in a hard number how many customers actually have this
8 black water problem. But -- and that's something that maybe
9 you might want to provide to staff, if, in fact, my fellow
10 Commissioners agree with me.

11 But -- and this is a question of legal. Is it -- is
12 that something that's permissible legally? Can we just deal
13 with the affected portion or do we have to take into
14 consideration Aloha's entire service territory?

15 MS. HELTON: Yes, sir. We believe that you can deal
16 with just the affected portions as have been laid out in
17 staff's alternate recommendation and that have been laid out in
18 the show cause order, the draft show cause order, I guess I
19 should say, that was attached to staff's recommendation.

20 COMMISSIONER BRADLEY: So that's something we don't
21 need to deal with; that is already included in the alternative
22 rec. Just the territory that's --

23 MS. HELTON: Yes. As staff's alternate
24 recommendation does not recommend that revocation proceedings
25 be initiated with respect to Aloha's entire service area.

1 nstead, what staff has done is delineated those four service
2 reas where in staff's opinion the greatest problems exist and
3 where also the customers have filed petitions.

4 COMMISSIONER BRADLEY: Okay. Now let me ask this
5 question. What does staff need to have in order to know
6 exactly how many customers we're dealing with? Is that
7 something that Aloha has provided to you or is that something
8 that they would provide to you in the future?

9 MS. HELTON: Maybe -- let me try, and then maybe
10 Mr. Stallcup, if I'm saying anything incorrectly, he can
11 answer. But it's my understanding that we know the precise
12 number of customers that are in those delineated service areas,
13 and those are the customers to whom we sent surveys. That
14 information was provided to us from the Pasco County Property
15 Appraiser's Office. I do not believe that we have yet been
16 provided by Aloha any type of backup information to verify
17 that.

18 COMMISSIONER BRADLEY: Okay. Let me ask this
19 question of Aloha. Is that a number that you're going to
20 provide to staff so that we clearly understand how many
21 customers you are working very rigorous, very diligently to
22 provide, provide remediation to?

23 MR. WHARTON: Commissioner Bradley, what Aloha can
24 give the staff and can give the Commission is what we got, and
25 that is the numbers who have complained. We have seen or

1 experienced black water in less than 100 homes and have
2 received about two or 300 complaints.

3 COMMISSIONER BRADLEY: Okay. Well, let me ask this
4 question. The source of the black water, is it from a specific
5 well or is it from all of your wells?

6 MR. WHARTON: I don't think anybody knows the answer
7 to that question. Right. It's a question that's been looked
8 at a lot and it's defied a ready answer.

9 COMMISSIONER BRADLEY: Well, if you don't know the
10 answer to that question, then that, that gives merit to
11 Mr. Beck's statement that we need to look at the entire
12 territory.

13 MR. WHARTON: Well, but you can't look -- you're not
14 looking at something in this proceeding, Commissioner. Earlier
15 Mr. Beck said, I wouldn't take that off the table as far as the
16 other 12,000 customers. You've got to know what's on the table
17 when you file this complaint under the Administrative Procedure
18 Act. Staff hasn't given you any information on the nonareas of
19 the four areas. I mean, if you feel like more investigation
20 needs to be done, then you could order that in some form or
21 fashion.

22 COMMISSIONER BRADLEY: Let me explain --

23 CHAIRMAN BAEZ: Mr. Wharton, just to try and short
24 circuit, we don't want to go down a rabbit hole on this.

25 MR. WHARTON: I understand.

1 CHAIRMAN BAEZ: I think you've heard, I think you've
2 heard a fair amount of understanding here that -- and I don't
3 want to be presumptuous, but there's, there's, at least I know
4 what I've heard, some acknowledgement that it is the affected
5 areas that would ever be the subject of --

6 MR. WHARTON: I can't answer these questions with
7 specificity in terms of what precise well is the source of the
8 water which turns black in some customers' homes, despite the
9 fact that it's been studied by many parties, not just us.

10 And on the question of how many customers are
11 experiencing black water, we can make the information
12 available, and I believe we have in the past, about how many
13 have brought that to our attention. On those two categorical
14 issues that's all we can do.

15 COMMISSIONER BRADLEY: Okay. Let me ask one other
16 question too and I'll be finished, maybe we can terminate this.

17 Earlier you mentioned mediation.. What did you mean
18 by mediation? What are you willing to mediate?

19 MR. WHARTON: We have retained Mr. Patrick Wiggins,
20 who is an experienced attorney in Commission matters and is a
21 mediator who was recommended for the item. We want to sit down
22 with the customers again. If there was some way to come up
23 with some solution -- see, the answer to everything is no.
24 Well, you can't aerate, hydrogen peroxide won't work. And then
25 the charge against us is that we do nothing.

1 If there is something that we can reach agreement on
2 that the customers would be willing for us to try that thing
3 and then to understand that it would have an impact on rates,
4 reach some kind of a global understanding, we're willing to
5 engage in those discussions. But, again, what we -- we don't
6 hear "do this" and that's a prudent thing and, if it doesn't
7 work, we won't say after the fact that it was improper for you
8 to do that, it was, you made a good try. But all we hear is
9 no. And we're willing to talk to any, again, to talk about
10 implementing processes or coming up with solutions. I mean,
11 I'm sure that the parties are pessimistic about mediation under
12 these circumstances, they often are. But we're willing to
13 engage in it in good faith, and maybe Mr. Wiggins can bring all
14 the parties together.

15 SENATOR FASANO: If I may.

16 CHAIRMAN BAEZ: Senator. Uh-huh.

17 SENATOR FASANO: I don't think I need to go into
18 detail why the customers would be pessimistic in dealing with
19 Aloha. I think that's already been made very clear as to why
20 they would be pessimistic.

21 To suggest that mediation will solve this problem, I
22 talked about, talked earlier in my public, my first statements
23 about a monopoly. That's what we have, a monopoly here, a
24 company that is not delivering a product that people are paying
25 for. They're paying for this product and they're getting dirty

1 water. Now Aloha wants to have a mediation with the customer
2 so they can go ahead and deliver them clean water. It's
3 baffling. Don't -- I mean, forgive me, and maybe, you know,
4 I'm not an attorney here or anything, but shouldn't they be
5 delivering clean water to begin with? They're not in this area
6 delivering clean water. It's fact. And now they want to sit
7 down with the, after all of these years, they want to sit down
8 and have mediation to solve the problem. Well, it's not the
9 customers' responsibility in solving the problem. It's the
10 company's responsibility in delivering clean water to the
11 customer.

12 Through testimony that many of you have heard both
13 back in Pasco County and up here, they're not delivering a
14 product that, that can be used. I don't know where mediation
15 goes. The purpose of mediation is so Aloha can determine how
16 much they're going to charge the customer for fixing the
17 problem they should have fixed years ago and delivering a
18 product that they should have been delivering to them years ago
19 and up until now, clean water. And now they want mediation to
20 determine not how they're going to fix it but how they're going
21 to get reimbursed to fix this problem that's theirs.

22 MR. WHARTON: We're willing to engage in the process
23 nonetheless. It might not be successful.

24 CHAIRMAN BAEZ: Thank you parties. Commissioners,
25 are there questions or we can --

1 COMMISSIONER DAVIDSON: One more question for General
2 Counsel. It's your lucky day.

3 At Page 47 of Item 6, which would be --

4 MR. MELSON: Yes, sir, I've got it.

5 COMMISSIONER DAVIDSON: -- the fifth page of
6 Attachment C, in the second full paragraph, about the fifth
7 line down, sixth line, the draft order states, "In failing to
8 provide service that is not less sufficient than is consistent
9 with the reasonable and proper operation of the utility in the
10 public interest Aloha was willful within the meaning." **Has**
11 this Commission previously in its orders, and I guess that
12 would be it, in its orders made that finding?

13 MR. MELSON: **No, sir. We don't have a previous order**
14 that we are aware of where a violation of 367.161 has been
15 alleged. I'm sorry, by --

16 COMMISSIONER DAVIDSON: Of Chapter 360. Well, what
17 I'm getting at is that it's that statement, I didn't mean to
18 interrupt, seems to be the condition precedent for the issuance
19 of the show cause order.

20 MR. MELSON: Yes, sir. The, the penalty statute
21 allows us to impose penalties for willful violations. The
22 language about willfulness and that willfulness means doing,
23 intentionally doing an act or intentionally failing to act is
24 the standard for willfulness, not consideration, did you intend
25 by that action or failure to act to violate a statute or rule?

1 That language has been in a lot of Commission orders.

2 COMMISSIONER DAVIDSON: Well, no, I understand that,
3 the use of "willful" there, and I was probably unclear with
4 respect to the question.

5 The question is the statement that begins with, "In
6 failing to provide," has this Commission made a prior
7 determination that Aloha, a specific determination that Aloha
8 has failed to provide service that is not less sufficient than
9 is consistent with the reasonable and proper operation of the
10 utility?

11 MR. MELSON: No, sir.

12 COMMISSIONER DAVIDSON: So would we be making that
13 factual determination today if we approved this, would that --

14 MR. MELSON: You, you would be making a factual
15 determination that there's probable cause to believe that they
16 have provided service that is less sufficient than the statute
17 requires.

18 COMMISSIONER DAVIDSON: And would that probable cause
19 determination in essence, if it was made, reflect by us a vote
20 that notwithstanding apparent compliance with DEP quality
21 standards, the sort of pattern of this, the issues with color,
22 taste, odor, allegations of not taking proactive steps and
23 customer service, that is -- would we be making here today a
24 determination that those facts or conditions constitute within
25 the meaning of the statute failing to provide service that is

1 not less sufficient than is consistent with the reasonable
2 expectation?

3 MR. MELSON: Yes, sir. That would be at least a
4 preliminary determination that the statute would categorize
5 those actions or failures as not providing sufficient service
6 in the public interest.

7 COMMISSIONER DAVIDSON: And I'll tell you my, my --
8 one concern I have is that sort of in this it would be useful
9 to have our sort of record evidence. And I understand we've
10 got sort of this prefiled testimony in orders, but it's,
11 there's a bit of a discomfort sort of from the bench today sort
12 of making this factual determination. And maybe what you're
13 saying is you're not actually making it. You're saying you've
14 got probable cause to think these facts exist and in 21 days
15 come forward with a proceeding as to why they --

16 MR. MELSON: Yes, sir. The probable -- at the
17 probable cause stage you're not, staff's not proving up a case
18 to the Commission. We're saying based on staff's
19 investigation, based on the information we've seen that is
20 summarized in fairly broad terms in this show cause order that
21 we're recommending to you and asking you to find that there is
22 probable cause to believe that this set of facts exists and
23 that that set of facts would constitute a violation of the
24 statute. The question of whether those facts really do exist
25 and whether they ultimately do show a violation of the statute

1 is the outcome of the final hearing.

2 COMMISSIONER DAVIDSON: All right.

3 CHAIRMAN BAEZ: Commissioners, questions or a motion?

4 COMMISSIONER DEASON: I have one final question for
5 Mr. Beck.

6 CHAIRMAN BAEZ: Go ahead.

7 COMMISSIONER DEASON: Mr. Beck, in answer to a
8 previous question you indicated that it's the customers' sole
9 desire to get clean water and it has been for some time. And I
10 take it by your position that you're taking here that the
11 customers believe that the best way to achieve that is to
12 proceed with the deletion proceeding; is that correct?

13 MR. BECK: Yes.

14 CHAIRMAN BAEZ: Commissioners, a motion? You have a
15 question, Commissioner or -- you have a motion?

16 COMMISSIONER BRADLEY: I have a motion. My motion
17 would be to move staff's alternative recommendation.

18 COMMISSIONER EDGAR: Second.

19 CHAIRMAN BAEZ: There's a motion and a second.

20 Commissioners, all those in favor, say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN BAEZ: Show it passed unanimously.

23 I guess my next question would be can you enlighten
24 me at least as to what the next steps are? The show cause
25 order gets issued.

1 MR. MELSON: The next step, to make sure that we're
2 touching all the bases, is to send a certified letter to Aloha
3 giving them notice that we're going to issue a show cause
4 order.

5 CHAIRMAN BAEZ: Correct.

6 MR. MELSON: Issuing the show cause order, giving
7 them an opportunity to respond.

8 COMMISSIONER DAVIDSON: They might be aware.

9 MR. MELSON: They might be, but I want to make sure
10 we've touched the legal bases. And then getting with a
11 prehearing officer to lay out a schedule for the case for the
12 staff's testimony, for intervenor testimony, if any, for
13 company testimony and getting it scheduled for hearing process.

14 CHAIRMAN BAEZ: There was, there was a, there was
15 some, Mr. Melson, and this would be my request anyway, although
16 I support the decision for so many reasons, one part of the
17 discussion that we had today had to do with remediation or
18 remedial measures. And, and I think that in light of the
19 responses from all the parties involved, certainly in light of
20 some of the comments or the questions that the Commissioners,
21 some of the Commissioners asked, and I include myself in that
22 group, if, if, if there is some acknowledgment that that may be
23 an appropriate -- there may be some room for that kind of
24 discussion, also in light of the fact that what the ultimate
25 goal here is is clean water, we need to consider time lines

1 that are consistent with those goals.

2 MR. MELSON: Yes, sir. There -- as General Counsel,
3 there's nothing I would like to see better than a joint motion
4 from the parties asking to hold the show cause in abeyance
5 while they proceed with their mediation.

6 CHAIRMAN BAEZ: But, but despite those wishes, we
7 would -- did I mention Christmas was over?

8 But, and I would join you in that, all kidding aside.
9 But, again, if that kind of petition wouldn't be forthcoming,
10 despite all hope, we do have the capacity to try and remain
11 fair and balanced about all of it because I think -- and I want
12 to, now after the vote, Senator, for your benefit and the rest
13 of us, the reason I asked some of the questions that I did is
14 that I, I firmly believe that the, that the customers have to
15 play a central role in this. I firmly believe that our
16 process, that the show cause process, such as it is, has to
17 provide an avenue for, although we are starting a new docket,
18 there is, there is some value in the docket, the prior existing
19 docket up until the point it was terminated. I really believe
20 that. You know, some may disagree. So I think there needs to
21 be an opportunity for, for the work that the customers did and
22 the information that they have provided and the viewpoints and
23 guidance that they've tried to provide. The testimony, in
24 fact, has to find its way into the proceeding and be of some
25 value to us. Likewise, likewise, I think everybody has to

1 acknowledge that there is a, and I keep using the word a
2 "remediation docket" out there or something that's going to
3 provide. Now we can split hairs as to what the motivations for
4 that are, what the causes of that are, but nonetheless I think
5 we need to be fair on both sides. And I don't, I don't want to
6 trample, neither do I want to trample the rights of the
7 customers to be heard, because I really do believe they deserve
8 their day in court. I agree with you, Senator, on that point.
9 I don't want to trample the company's right to be able to say,
10 hey, we have gone through, we are producing results perhaps or
11 we have spent so much money, you know, whatever the magic words
12 are, but that avenue cannot be foreclosed as well, it's my
13 honest, it's my honest feeling. Thus, my reasons for asking
14 Mr. Melson what our opportunities are to be able to allow those
15 things to happen, that really is my interest. And with that,
16 thank you, thank you all. Your input was very much
17 appreciated. Thank you, Commissioners.

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 11th of January 2005.

Linda Boles
LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734