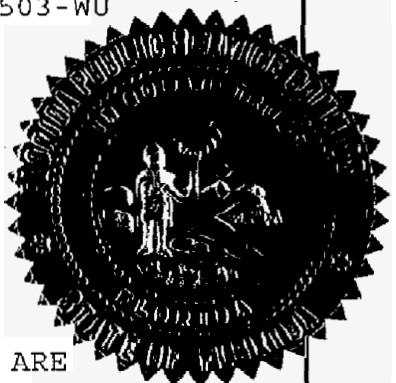


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. Q10503-WU

In the Matter of:

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



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY
Prehearing Officer

DATE: Thursday, February 24, 2005

TIME: Commenced at 9:35 a.m.
Concluded at 10:20 a.m

PLACE: Betty Easley Conference Center
Hearing Room 152
4075 Esplanade Way
Tallahassee, Florida

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

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1 APPPEARANCES:

2 CHARLES BECK, ESQUIRE, Office of Public Counsel, c/o
3 The Florida Legislature, 111 W. Madison St., Room 812,
4 Tallahassee, Florida 32399-1400, appearing on behalf of the
5 Office of Public Counsel.

6 MARSHALL DETERDING, ESQUIRE, and JOHN L. WHARTON,
7 ESQUIRE, Rose, Sundstrom & Bentley, 2548 Blairstone Pines
8 Drive, Tallahassee, Florida 32301, appearing on behalf of Aloha
9 Utilities, Inc.

10 HARRY HAWCROFT, 1612 Boswell Avenue, New Port Richey,
11 Florida 34655, appearing on behalf of Harry Hawcroft,
12 participating telephonically.

13 V. ABRAHAM KURIEN, M.D., 1822 Orchardgrove Avenue,
14 New Port Richey, Florida 34655, appearing on behalf of
15 Dr. V. Abraham Kurien, participating telephonically.

16 EDWARD O. WOOD, 1043 Daleside Lane, New Port Richey,
17 Florida 34655, appearing on behalf of Edward O. Wood,
18 participating telephonically.

19 RALPH JAEGER, ESQUIRE, FPSC General Counsel's Office,
20 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
21 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER BRADLEY: I would like to call this
3 prehearing conference to order. Could I have, please have the
4 notice read.

5 MR. JAEGER: Pursuant to notice issued February 8th,
6 2005, this time and place has been scheduled for a prehearing
7 conference in Docket Number 010503-WU.

8 COMMISSIONER BRADLEY: Thank you. It is my
9 understanding that we have three customers attending by
10 telephone, plus an individual from Aloha. Is that correct?

11 MR. JAEGER: That's correct. Their consulting
12 engineer may or may not call in, we don't know, but we have a
13 "meet me" line and he may call in during the process. We don't
14 know if he is or not.

15 COMMISSIONER BRADLEY: Okay. Is it important to
16 identify who is available?

17 MR. JAEGER: Marty, you don't need -- no. That's
18 Aloha's consulting engineer, and we can proceed without him.

19 COMMISSIONER BRADLEY: Okay. Let's take appearances
20 for this docket. Please enter your appearance and who you're
21 appearing for.

22 MR. WHARTON: Commissioners, John Wharton and
23 Marty Deterding for Aloha Utility.

24 MR. BECK: And, Commissioner Bradley, my name is
25 Charlie Beck, Office of Public Counsel, appearing on behalf of

1 Florida citizens.

2 DR. KURIEN: This is Abraham Kurien.

3 MR. HAWCROFT: This is Harry Hawcroft.

4 MR. WOOD: This is Edward Wood.

5 DR. KURIEN: Appearing on behalf of the customers or
6 on their own behalf.

7 (Discussion held off the record.)

8 COMMISSIONER BRADLEY: Okay. And, Ralph.

9 MR. JAEGER: Ralph Jaeger appearing on behalf of the
10 Florida Public Service Commission.

11 COMMISSIONER BRADLEY: Are there any preliminary
12 matters?

13 MR. JAEGER: None that I know of, sir.

14 COMMISSIONER BRADLEY: It is my intention to go
15 through the, to go through the draft prehearing order section
16 by section as quickly as possible. If there are any questions,
17 clarifications or changes, please let me know at the
18 appropriate time.

19 We will begin with Section I, conduct of proceedings.

20 Any comments?

21 Section II, case background.

22 Section III, jurisdiction.

23 MR. WHARTON: Commissioner Bradley.

24 COMMISSIONER BRADLEY: Yes, sir.

25 MR. WHARTON: It may be --

1 COMMISSIONER BRADLEY: Please identify yourself.

2 MR. WHARTON: John Wharton on behalf of Aloha. It
3 may be that based on a discussion that we will have later about
4 the issues, that if a certain issue becomes an issue, then we
5 are going to propose that you do not have jurisdiction over
6 that issue, and that would relate to this section. But we can
7 determine that at the time.

8 COMMISSIONER BRADLEY: Okay. We'll deal with that at
9 the appropriate juncture.

10 MR. BECK: Sure.

11 COMMISSIONER BRADLEY: Section IV, procedure for
12 handling confidential information.

13 Section V, posthearing procedures.

14 Section VI, prefiled testimony and exhibits,
15 witnesses.

16 MR. WHARTON: Commissioner Bradley, John Wharton on
17 behalf of Aloha.

18 The first sentence says, "Testimony of all witnesses
19 to be sponsored by the parties and staff has been prefiled."
20 The concept of sponsoring is one that we don't need to quibble
21 about, but Aloha may seek to introduce either the depositions
22 or the live testimony of certain PSC staff members, and that is
23 a matter which is currently in a motion practice before you;
24 Aloha's response to staff's motion is due today and will be
25 filed today.

1 COMMISSIONER BRADLEY: Thank you. Any comments?

2 MR. JAEGER: No comment.

3 COMMISSIONER BRADLEY: Section VII, order of
4 witnesses.

5 Section VIII, basic positions.

6 MR. WHARTON: Commissioner Bradley, John Wharton on
7 behalf of Aloha. I just feel like that it is incumbent upon us
8 to make a statement for the record that these basic positions
9 are not evidence. Because what OPC and the customers have put
10 in here is not basic; it is quite lengthy and quite detailed.
11 and so I just want to make clear that that's our position.

12 COMMISSIONER BRADLEY: Okay. Any other comments?

13 MR. JAEGER: No comments, sir.

14 COMMISSIONER BRADLEY: Section IX, issues and
15 positions, and I'd like to make a brief comment here.

16 Staff tells me that Aloha and, and other parties have
17 reached an impasse on the phrasing of the issues.

18 MR. WHARTON: I believe that's correct, Commissioner
19 Bradley, John Wharton on behalf of Aloha, and I would like to
20 speak to that issue.

21 COMMISSIONER BRADLEY: Okay. But it's also my
22 understanding that the first three issues are the customers'
23 and OPC's issues; is that correct?

24 MR. BECK: Yes, sir. And those three issues come
25 directly from the protest that was filed by the customers.

1 COMMISSIONER BRADLEY: Okay. And it's also my
2 understanding that the next two issues are the issues that are
3 proposed by Aloha; is that correct?

4 MR. WHARTON: It is, Commissioner.

5 COMMISSIONER BRADLEY: Okay. The way I want to
6 handle this is to have each party present their argument for
7 all of their proposed issues at one time instead of going
8 individual issue by issue, and I'm going to take the customers
9 and OPC first.

10 MR. BECK: Okay. Thank you, Commissioner.
11 Commissioner, I think the matter concerning the issues goes
12 back almost three years to when the Commission issued its final
13 order in the rate case in April of 2002. And in that order the
14 Commission ordered Aloha to implement improvements to Wells 8
15 and 9 and then to all its wells to implement a treatment
16 process designed to remove at least 98 percent of the hydrogen
17 sulfide in its raw water. That's the final order of the
18 Commission.

19 Aloha appealed that order to the 1st District Court
20 of Appeal, so it never actually came into place while the
21 appeal was pending. The Commission's order was upheld by the
22 1st District Court of Appeal. Then subsequently Aloha filed a
23 motion to, to amend this portion of the final order that I just
24 read to you. That led to the Proposed Agency Action, which
25 would have changed that portion of the order, and then the

1 customers protested that Proposed Agency Action.

2 In the protest the customers listed the three issues
3 that you see here word for word. In other words, we've taken
4 the issues that we protested on the Proposed Agency Action and
5 have put them in our prehearing statement as the issues. All
6 three of those issues are encompassed by the, the initial order
7 that was adopted by the Commission and approved by the 1st
8 District Court of Appeal.

9 I'm not quite sure what else to say. I mean, that's
10 what defined why we're here: That you had a PAA which changed
11 language that required, that initially required Aloha to remove
12 98 percent of the hydrogen sulfide from its wells. All three
13 of these issues are encompassed by that and by the Proposed
14 Agency Action Order that would have changed it to the Tampa Bay
15 Water Standard. They're all proper. I think since those are
16 the, since those are the issues in the protest, they
17 essentially define why we're here, why we're having a hearing
18 on the protest, because that's what this is about, it's a
19 hearing on the protest by the customers. Thank you.

20 COMMISSIONER BRADLEY: Okay. Next. Aloha, your
21 argument.

22 MR. WHARTON: Thank you, Commissioner Bradley. John
23 Wharton on behalf of Aloha. Commissioner Bradley, it is
24 important to understand that this matter results from a
25 Proposed Agency Action Order which the Commission issued on

1 July 20th, 2004, which encompassed many subjects.

2 Dr. Kurien then filed a protest along with two other
3 customers to that PAA. The subsequent, I believe, and it's not
4 really important whether it was staff's motivation, to a
5 conversation between counsel for Aloha and counsel for the
6 staff, we said it's confusing what has become final because it
7 is not subject to the protest and what is encompassed within
8 the protest.

9 Staff then issued on August 25th, 2004, a
10 consummating order. It was a final order, not a Proposed
11 Agency Action, that said this is the part of the PAA that has
12 become final. That final order was not protested and, in any
13 case, could not be the subject of an administrative proceeding.
14 Because it is a final order it could only be protested directly
15 to the 1st District Court of Appeals, which it was not. We
16 believe it is that unchallenged, unappealed consummating order
17 which supports that customer Issues 1 and 2 are not properly
18 issues in this proceeding. That order said, Order Number
19 PSC-040712-PAA-WS, which was the PAA order, has become final to
20 the extent that -- and it contains language that says Aloha,
21 the 98 percent shall be removed and Aloha will make
22 improvements to Wells 8 and 9 and then to all of its wells as
23 needed to meet a goal, a goal of 0.1 mg/L of sulfides in the
24 finished water.

25 Customer Issue 1 asks the Commission to impose a

1 maximum contaminant level. Commissioner Bradley, that is
2 completely different than a goal and cannot be reconciled with
3 the word "goal." That's like saying that your goal is to go
4 55 in a 55-mile-an-hour speed limit. We have now included in a
5 portion of the prehearing order you have already approved
6 without objection the case background the same language, to
7 meet a goal of 0.1. A goal of achieving a certain level of
8 hydrogen sulfide in the finished water and a maximum
9 contaminant level, which is a term of art used by the
10 environmental agencies who have jurisdiction over utilities
11 such as DEP and EPA, cannot be reconciled. And if that is an
12 issue in this case, then it is not the PAA which is before us
13 for modification, it is a de facto modification of the
14 unappealed final consummating order. Again, that issue, I
15 don't think, needs further elucidation. It says, this is the
16 part of the PAA that has become final. Aloha depended on that
17 and conducted its activities accordingly.

18 I'd like to move on to the next issue, unless you
19 have any questions, Commissioner.

20 COMMISSIONER BRADLEY: You may.

21 DR. KURIEN: Commissioner, Commissioner Bradley, this
22 is Dr. Kurien speaking. In fact, when the customers agreed to
23 change the 98 percent order, we asked that the
24 Tampa Bay Water Standard be used. The Tampa Bay Water in
25 Exhibit D uses the words "maximum contaminant level, goal

1 standard action level, compliance level" all interchangeably.
2 The contest of the customers is not in relation to the words
3 'maximum contaminant level," but to the point at which the
4 water should be tested. And I made that very clear in my
5 rebuttal statement.

6 Therefore, the question is where should the water be
7 tested to meet that contaminant level, goal, standard, whatever
8 you want to call it, of the 0.1 milligram. And the
9 Commission's order of August 21st specifically said, ordered
10 that Number 010503-WU shall remain open pending resolution of
11 the protest to portions of Order Number PSC-040712-PAA-WS,
12 including the methodologies for determining the compliance with
13 the revised standard, and, I repeat, the location, and the
14 location at which compliance is measured.

15 So the order of August 21st of 2004 does not exclude
16 a discussion of the location. The phrase "maximum contaminant
17 level," as I already mentioned, is language taken from
18 Exhibit D, which was submitted by Aloha as the basis for its
19 change. We agreed that, that standard be accepted. And if
20 Tampa Bay defines that standard in a particular way, that is
21 acceptable to the customers and I have said so.

22 The problem is that Aloha changed the wording to make
23 the standard or maximum contaminant level or goal be referred
24 to the point of the treatment facility. That is the point of
25 contest.

1 MR. WHARTON: Respectfully, Commissioner Bradley,
2 John Wharton on behalf of Aloha, I know that you didn't want to
3 set this up as a tit for tat, but, again, my focus is not on
4 the subject Dr. Kurien addressed. It is on the situation we
5 now find ourselves in.

6 Aloha conducted its activities and its preparation of
7 this case accordingly. The consummating order says in two
8 paragraphs on Page 2, in the last paragraph of the order and in
9 the first ordering paragraph, "The PAA has become final to the
10 extent that," and the language is, "Aloha Utilities, Inc.,
11 shall make improvements to its Wells 8 and 9 and then to all of
12 its wells as needed to meet a goal of 0.1 mg/L." We've just
13 agreed that's the proper statement of the case background that
14 cannot be reconciled with a maximum contaminant level which has
15 been described in various documents including depositions as an
16 action level. The presumption is there is a punishment there
17 if it is not met that cannot be reconciled with the clear
18 directive of a goal. If we go to hearing on Issue 1, it is
19 modification of the unchallenged consummating order which will
20 de facto be the issue, and that, that is not proper.

21 And I'm not casting aspersions on Public Counsel,
22 Dr. Kurien or anyone else, but I'm saying this is what the
23 unchallenged order says. This is what the order that was
24 intended to clarify, here's the part of the PAA that has become
25 final by virtue of the fact that it is not challenged and

1 ere's the part that remains subject to challenge. It is very
2 lear.

3 Should I move on to Issue 2?

4 COMMISSIONER BRADLEY: Yes, you may.

5 MR. WHARTON: Okay. Commissioner Bradley, similarly
6 e believe there are several reasons that Issue 2 is not an
7 ssue in this proceeding.

8 First of all, I will take you back to the
9 onsummating order. And to rely upon the comments I have
10 already made, that it is unchallenged, it is unappealed and it
11 s the kind of order which cannot be the subject of an
12 dministrative appeal because it is a final order, the only
13 choice was to appeal it directly to the 1st DCA. That
14 onsummating order has the language that Aloha shall make
15 mprovements to Wells 8 and 9 and then to all of its wells as
16 eeded. As needed. Well, it is Aloha's position that we are
17 meeting the goal now through the current process.

18 Issue 2 is an attempt by Dr. Kurien and the citizens
19 to secure an order from the Commission directing us to engage
20 in another process. Therefore, even though the clear language
21 of the consummating order says we only need to make the
22 improvements as needed to meet the goal, the de facto effect of
23 that is that even if we're meeting the goal, if you tell us to
24 change the process whereby -- that we're using to meet the
25 goal, we're going to have to spend millions and millions and

1 millions of dollars because that's the difference between
2 removal of hydrogen sulfide, Dr. Kurien and OPC's position in
3 this case in Issue 2, and the way we're meeting it now,
4 conversion. That makes the word -- the improvements only need
5 to be made as needed without any force and effect.

6 Additionally, the consummating order, again, which
7 was issued by the Commission to clarify these issues, says here
8 is what the other docket shall remain open pending resolution
9 of the protest, including the methodologies for determining
10 compliance with the revised standard and the location at which
11 compliance is measured.

12 Now, again, Commissioner Bradley, I see the word
13 "including" there and I see that the language says "subject to
14 the protest." But those were the two things that were singled
15 out, and that is completely consistent with the two prior
16 paragraphs saying you're only going to make these improvements
17 as needed, which presumes that if you're meeting the goal, you
18 don't need to make the improvement. And that can't be
19 reconciled with Issue 2.

20 Commissioner Bradley, another thing that is
21 implicated by Issue 2 is that it is our position that the
22 Proposed Agency Action did not get into this subject and,
23 therefore, it is not a proper issue.

24 On Page 18 of the Proposed Agency Action the
25 Commission said, Commission practice has been not to

1 micromanage the business decisions of regulated companies, but
2 to instead focus on the end-product goal. In keeping with this
3 established practice, we decline to prescribe the specific
4 treatment process to be used in this case. Issue 2 of the
5 customers is an attack on that established practice. I
6 believe, Commissioner Bradley, that is nothing but a musing in
7 a 20-page order. It was just something that the Commission
8 talked about while it was talking for 20 pages here, and it's
9 not in any of the ordering paragraphs.

10 You yourself, Commissioner Bradley, have said at an
11 Aloha agenda conference, and I apologize that I only recalled
12 this this morning and did not bring the transcript, that, I
13 don't think we want to micromanage the utilities in terms of
14 telling them how to accomplish what we tell them to do. We
15 just want to tell them, you do this, and then they conduct
16 their, their activities. And that -- this order says that that
17 is the Commission's long-standing practice. That is a matter
18 that is being challenged here.

19 On, on January 4th, Commissioner, when we last had an
20 agenda item on these matters, Chairman Baez expressed some
21 confusion on the issue, the Commission is the one who issued
22 these two orders, saying, "I'm trying to reconcile the fact
23 that there are two dockets going on, that there's an
24 expenditure, I'm sure we all agree. And I have a question I
25 want to ask. Is there -- is the appropriateness of the

1 hydrogen peroxide treatment at issue in any docket?"

2 Mr. Wharton: It's not the science of it that's at
3 issue --- I'm sorry. Mr. Wharton: "It's a compliance point
4 issue really, where to measure compliance."

5 Chairman Baez: "It's not the science of it at issue;
6 is that everybody's understanding?"

7 Mr. Wharton: "It's not the process itself."

8 Chairman Baez, "No, not in this docket, not in this
9 docket."

10 And Mr. Beck said, "Right. There's a protest of the
11 order in the rate case order of how do you test, you know, for
12 hydrogen sulfide, where you do it and how often and so forth."

13 That was the -- Dr. Kurien was sitting there, and,
14 again, I'm not trying to say that Mr. Beck's done anything
15 wrong or Dr. Kurien or the Commission or anyone else, but that
16 was a chance for somebody to say, no, no, now the Chairman just
17 asked is it the appropriateness of the hydrogen peroxide
18 treatment which is at the heart of the conversion versus
19 removal issue? Nobody said it was. And we hadn't filed any of
20 our testimony by that part.

21 So I'm going to tell you, Commissioner Bradley, in
22 all candor that if that's an issue in a moment, we're going to
23 move for a continuance. Because not anyone's fault, but the
24 consummating order cannot be reconciled with the inclusion of
25 these two issues, the conduct of the parties, the statements of

1 the parties. And, again, we don't think that the process
2 whereby we achieve the goal is at issue. If you go to trial on
3 that, you're modifying the unappealed consummating order which
4 said that part has become final, which should preclude these
5 two issues.

6 MR. BECK: May I respond briefly?

7 COMMISSIONER BRADLEY: Yes.

8 MR. BECK: Commissioner Bradley, Aloha has it
9 completely wrong on what the consummating order did or did not
10 do.

11 On the case background that we just discussed and
12 everybody said was fine, the draft prehearing order describes
13 what the partial consummating order does. It says it
14 consummated the portions of the PAA order that were not
15 protested and recognized the portions of the PAA order
16 contested by the customers. That's precisely what the
17 consummating order does. It says that the portions of the
18 order that weren't protested go into effect and the portions
19 that were protested don't. Our three issues are precisely what
20 protested the PAA. Those are the issues and they -- with
21 respect to the removal of hydrogen sulfide, the original order
22 three years ago issued by the Commission discusses removal of
23 hydrogen sulfide. There's no surprise there. Aloha appealed
24 it and it lost. The Commission came in and proposed changing
25 that. The Commissioners protested that change. So you're back

1 here the Commission was with the removal of hydrogen sulfide
2 those are the issues.

3 The consummating order was never voted on by the
4 Commission. It does nothing other than to recognize a
5 ministerial act, which says those things that are not protested
6 go into effect, those issues that were protested don't. It's
7 issued by the staff, there's no vote by the Commission, no
8 review by the Commission. It's simply issued by the staff as a
9 ministerial act.

10 What Aloha is trying to do is to argue that the staff
11 acting on its own issued an order that denied two of the three
12 issues protested. Not only is that not what the staff did,
13 they can't do it. They have no authority. The Commission
14 never voted on it. Those are the three issues that are in this
15 case. Aloha has known it from day one. Those issues are
16 precisely word for word what's in the protest and that's what
17 we're here for a hearing on. So we request that all three of
18 those stay exactly as they are. Thank you.

19 MR. WHARTON: Briefly, Commissioner Bradley. John
20 Wharton on behalf of Aloha.

21 Sir, first of all, I request that you put a copy of
22 the consummating order in front of you. The prehearing order,
23 are we now being told, is a modification of the consummating
24 order? The consummating order is clear.

25 Not only that, with all due respect, Mr. Bradley,

1 Commissioner Bradley, the legality of the consummating order
2 has just been called into question by OPC. That is going to go
3 again to the possibility of a continuance here.

4 The consummating order is a legal order of the
5 Commission. The 1st DCA isn't interested in review of staff's
6 opinions or memorandums. This has notice of judicial review at
7 the, at the bottom that says that's where you go with this
8 thing. This thing is a Commission order by whatever internal
9 means that you issue them that we're not privy to. But, again,
10 our position is it's a very, very important issue. The whole
11 reason the customers, OPC and Aloha came in for modification
12 was that removal of the 98 percent was not practical and was
13 not technologically feasible and possibly not permissible under
14 the regulatory schemes enacted by DEP. Here we're about to
15 somehow come full circle, and not in a very clear way, a very
16 nebulous way, to get back to that same issue. And yet when
17 we've looked into those issues in the prior Aloha hearings,
18 there were hundreds of thousands of dollars spent on witnesses,
19 cases, depositions. Here the only testimony filed by the
20 customers, and with all due respect to Dr. Kurien, is of a
21 medical doctor. Do we want to make that decision after all
22 these years as to whether Aloha should be ordered by the
23 Commission to implement a multi-million dollar process in this
24 docket? I think that's what Chairman Baez was trying to get to
25 on January 4 to make sure that wasn't what was going to happen.

1 But, again, with all due respect to Mr. Beck and the
2 way the Commission issued the order, read what the consummating
3 order said. It's clear.

4 DR. KURIEN: Commissioner Bradley, this is Dr.
5 Kurien. In April of 2002 when the Commission issued the order
6 for 98 percent removal, it did so, I understand, because the
7 oxidating method, which was a conversion method, had not
8 resulted in improvement of water quality. It was associated
9 with the production of black water. So when the Commission
10 said remove, it must have meant removal, not conversion.
11 Whether the Commission wishes to micromanage a utility or not,
12 the intent of the Commission was that it should, the process
13 should provide for removal of hydrogen sulfide because
14 conversion does not achieve the goal of reducing black water.

15 MR. WHARTON: Commissioner Bradley, just one last
16 comment without any further arguments on that. If you deem
17 that it is in the public interest, I will move now ore tenus
18 for a continuance. I will represent to you as an officer of
19 the court that we are currently meeting the goal. Therefore,
20 no party will be prejudiced by such a continuance. Wherefore,
21 the issues are clarified in an argument, in an order in which
22 nobody believes there is a conflict between what this case is
23 about and nobody is asserting that this order does not have the
24 force and effect of any other Commission order. I just want to
25 put that before you as you determine the right way to proceed.

1 COMMISSIONER BRADLEY: Staff.

2 MR. JAEGER: Commissioner, I think John --
3 Mr. Wharton did have a point, look at the consummating order.
4 And the consummating order at the top of Page 2, it says, The
5 petition does protest the proposed requirement of Order Number,
6 the PAA order, that Aloha meet the TBW, Tampa Bay Water
7 Standard as that water leaves the treatment facilities of the
8 utility. Moreover, the petition protests the methodology upon
9 which compliance with the TBW Standard shall be determined. So
10 it's the methodology upon which compliance -- and I believe
11 when Commission staff drafted this order, they thought that
12 encompassed the three -- you know, the order speaks for itself.
13 But when you talk about methodologies determining compliance,
14 then, you know, the three paragraphs are exactly as stated in
15 their protest, and staff was thinking that the methodology to
16 determine the compliance would encompass those two issues. I
17 did not draft the order, but that was my interpretation of --
18 and after -- and conversation.

19 So you look at the consummating order, you look at
20 the protest of the customers. The utility was -- they saw what
21 the customers were protesting, and those words have not been
22 changed whatsoever from the protest.

23 MR. WHARTON: Commissioner Bradley, John Wharton on
24 behalf of Aloha. First of all, the methodology language is the
25 one we have incorporated in our proposed issue.

1 Secondly, with all due respect to Dr. Kurien, if you
2 look at his position on these issues, he is an individual who
3 is, is verbose in terms of expressing his ideas. We looked at
4 the petition and tried to figure it out. We relied, not back
5 three paragraphs in the consummating order to some nebulous
6 definition of methodologies -- perhaps we're having an argument
7 here at the definitional level, but an order shouldn't be that
8 way -- but to the very two clear paragraphs to which I have
9 repeatedly referred you.

10 And, again, I -- the fact that this, this discussion
11 has revealed that the parties are not on the same page, I think
12 that I have demonstrated and that the language in the order
13 indicates that the page Aloha is on it did not reach through
14 some tortured interpretation, it reached reasonably. I renew
15 my ore tenus motion for a continuance and renew my argument
16 that the public will not be prejudiced. We are now embarking
17 on the other proceeding. The show cause order was issued
18 yesterday or the day before. These cases were consolidated
19 before. And I again represent to you as an officer of the
20 court that Aloha is meeting the goal now and that is why a
21 continuance would not prejudice any person.

22 MR. BECK: Commissioner, may I respond briefly? I
23 know you've been listening patiently to us. Just briefly,
24 Aloha's argument is not reasonable. As, as staff's attorney
25 said, the consummating order simply does what it's describing,

1 nd that is it consummates the portions of the order that
2 aren't protested. The portions that are protested go forward.
3 Aloha cannot reasonably claim that it doesn't know what was
4 protested. There's a lengthy protest and it spells out with
5 specificity the three issues that are before you today on the
6 customers' prehearing statement.

7 Their request -- therefore, their position is not a
8 reasonable one. It's been in front of them, the consummating
9 order does exactly what it's supposed to be, and it consummates
10 what's not protested. And, therefore, we would oppose the
11 continuance because their, their statement about the issue is
12 simply not reasonable.

13 COMMISSIONER BRADLEY: Okay. That's Issue 1 and
14 Issue 2. What about Issue 3?

15 MR. WHARTON: We're fine with customer Issue 3,
16 Commissioner Bradley.

17 COMMISSIONER BRADLEY: Okay. Well, I guess I need to
18 rule as it relates to the motion for a continuance. First, I'm
19 going to deny that motion. And I, I must say that all parties
20 have presented compelling arguments as it relates to the first
21 two issues, and I've heard the arguments of both customers and
22 Aloha. And I understand that the customers are the parties,
23 the customers and OPC, that is, are the parties that filed the
24 protest and that the ultimate burden of proof is going to be on
25 them to prove their case. I further understand that the

1 customers listed these three issues back when they filed their
2 protest as the issues being protested. Also, while I
3 appreciate Aloha's argument, I think that the protesting party
4 should have the opportunity to define the issues according to
5 their protest. Accordingly, my ruling is that the three issues
6 proposed by the customers and OPC shall be used as the issues
7 in this docket.

8 MR. WHARTON: Although I do have a supplemental issue
9 I'd now like to suggest, given, given your ruling.

10 COMMISSIONER BRADLEY: Okay.

11 MR. WHARTON: All right. And that issue is a legal
12 issue.

13 Does the Commission have the authority to regulate,
14 impose or establish drinking water standards, maximum
15 contaminant levels, action levels or treatment technique
16 requirements? Do you have the authority to do what is
17 requested of you in Issue 1 and 2?

18 The procedure order says that any issue not waived
19 prior to the issuance of the prehearing order may be waived
20 other than for good cause shown. Obviously we're in --

21 COMMISSIONER BRADLEY: Well, it would be my opinion
22 that the Commission has the authority to, to deal with issues
23 that are related to the quality of service and that quality of
24 service would encompass what you just put forth. So,
25 therefore, I would --

1 MR. WHARTON: Respectfully, Commissioner Bradley,
2 though --

3 COMMISSIONER BRADLEY: -- rule that we do have
4 jurisdiction.

5 MR. WHARTON: I think what you're going to hear from
6 the parties is the DCA already ruled on that and said you did
7 have the authority in one way or another because it approved
8 the -- it refused to issue an opinion on the prior order that
9 said Aloha had to remove 98 percent. But with all due respect,
10 we'd still be looking at segregated schools if the lawyers and
11 parties were not allowed to challenge those kind of rulings.
12 And I believe that the court of appeals made a mistake and we
13 would like to pursue that issue again. We would like to brief
14 it and we would like to appeal it.

15 MR. JAEGER: Commissioner, it wouldn't involve any
16 more testimony. It would be a pure legal issue and they
17 could -- I believe that they can add that, as he says, at this
18 point, and then all parties could brief it.

19 MR. BECK: Commissioner Bradley, it seems to me that
20 that could be encompassed in Issue 1 and people could take
21 their position on the Commission's -- see, that's the real
22 issue is does the Commission have jurisdiction to, to rule on
23 Issue 1? So I think that's just simply included in that.
24 People can, they can say that there's no jurisdiction or not in
25 their response to it.

1 MR. WHARTON: We request that it be included
2 separately though.

3 COMMISSIONER BRADLEY: Well, it would be my, it would
4 be my opinion, as I mentioned earlier, that we do have
5 jurisdiction because we do have jurisdiction over quality of
6 service issues. But so noted.

7 Accordingly, my ruling is that the three proposed
8 issues, the three issues proposed by the customers shall be, as
9 I said, I think I said, if not, I will say it at this point,
10 that my ruling officially is that the three issues proposed by
11 the customers and OPC shall be used as the issues in this
12 docket.

13 MR. WHARTON: So Aloha Issue 3 shall not be put in
14 the prehearing order as a separate issue?

15 COMMISSIONER BRADLEY: Aloha's Issue 3?

16 MR. WHARTON: That's the one I just read to you. The
17 issue that I just proposed will not be included as an issue, a
18 separate issue?

19 COMMISSIONER BRADLEY: Staff -- I think it's staff
20 recommendation that it be included. Is that --

21 MR. JAEGER: Yeah. Staff, although I agree with
22 Charlie, it's encompassed in one, but if they -- I don't see
23 any harm them adding that issue and all parties can brief it as
24 need be.

25 COMMISSIONER BRADLEY: Well, we'll add that issue.

1 MR. WHARTON: Thank you, Commissioner.

2 COMMISSIONER BRADLEY: Thank you.

3 Okay. Back to proceeding through the draft
4 prehearing order. Section X, exhibit list. Any comments?

5 Section XI, proposed stipulations. Are there any
6 stipulations?

7 MR. WHARTON: Other than as reflected, I'm not aware
8 of any.

9 MR. BECK: I agree, Commissioner.

10 MR. JAEGER: No problems with Section XI.

11 COMMISSIONER BRADLEY: Okay. Section XII, pending
12 notions

13 MR. JAEGER: Commissioner Bradley, we have there
14 staff filed a motion to expedite, and Aloha responded to that
15 interrogatory on February 22nd and that motion is now moot. I
16 can -- staff can either withdraw that or just leave that
17 language there in this prehearing order to have a history of
18 what happened to that motion. It doesn't matter. It's your
19 preference. And if we withdraw it, then I would cross out
20 those first two sentences there.

21 MR. WHARTON: No objection.

22 MR. JAEGER: Whichever -- it's your preference:
23 Either leave the two sentences in and I don't have to do
24 anything or we take those two sentences out and we do a notice
25 of withdrawal.

1 MR. WHARTON: We have no preference in that regard.

2 COMMISSIONER BRADLEY: Mr. Beck?

3 MR. BECK: I have no, no position.

4 COMMISSIONER BRADLEY: Well, we'll withdraw it.

5 MR. JAEGER: Okay. Staff will do a notice of
6 withdrawal.

7 MR. WHARTON: Commissioner Bradley, just on that same
8 section of the proposed prehearing order, we do anticipate that
9 we will file other motions pursuant to the uniform rules prior
10 to or at the time of the hearing.

11 COMMISSIONER BRADLEY: That's fine.

12 Are we ready for Section XIII? Section XIII, pending
13 confidentiality matters. Mr. Wharton?

14 MR. WHARTON: No.

15 MR. BECK: None.

16 COMMISSIONER BRADLEY: Section XIV, rulings.

17 MR. JAEGER: Commissioner Bradley, you've ruled on
18 the three issues and we would be striking the two of Aloha's as
19 listed. And then I, I can put in a ruling that the legal
20 issue -- and I'll get that from John and add that. And I
21 believe other than that those would reflect your rulings.

22 COMMISSIONER BRADLEY: Okay. And also just for the
23 record I'm going to make the ruling that opening statements
24 should not exceed ten minutes per party.

25 MR. JAEGER: One thing I did forget, the ruling on

1 the ore tenus motion made by John was denied.

2 MR. WHARTON: And, Commissioner Bradley, I would like
3 to move ore tenus for a continuance to allow Aloha to seek an
4 interlocutory appeal of the prehearing order. And I presume --
5 well, I won't presume.

6 COMMISSIONER BRADLEY: You -- state that again,
7 please

8 MR. WHARTON: This is an appealable order. I believe
9 that, as I argued earlier, that certain issues should not have
10 been included and that certain issues should have. There is
11 obviously no time to seek an interlocutory appeal of this
12 order, which is not even issued yet and probably won't be for a
13 number of days, to the 1st District Court of Appeal before the
14 hearing. And we would like to continue the hearing so that we
15 can seek an interlocutory appeal of the propriety of the ruling
16 on the issues.

17 COMMISSIONER BRADLEY: Well, again, it would be my
18 ruling that the continuance is denied, and I would like to, as
19 quickly as possible, get this matter before the full
20 Commission.

21 MR. WHARTON: Okay. And, Commissioner Bradley,
22 there's just one other thing. And I guess in a way this is
23 more of a request than because I don't get an opportunity to
24 talk to you much or the Commissioners, it's the only thing, I
25 think, that Mr. Beck and I have ever agreed on in this case and

1 perhaps some of the others that we've done, and that is you
2 made a prior ruling that Mr. Beck and I sat in front of you at
3 the table and the Commissioners on reconsideration said, well,
4 we're limited to this standard of whether Mr. Bradley
5 overlooked something. I want to argue again that I understand
6 why the reconsideration standard is so narrow. If you're
7 appealing an order from the five Commissioners, they've already
8 looked at it. But if it is from a single Commissioner and
9 there is reconsideration, I believe they should look at those
10 matters de novo anew, and we are going to move for
11 reconsideration of this order and possibly interlocutory
12 appeal.

13 And, again, I mean, my comments are maybe apropos of
14 nothing, but I do think there's a distinction between
15 reconsideration when the five of you have already looked at it
16 and reconsideration when it was just the prehearing officer.

17 COMMISSIONER BRADLEY: And I can appreciate your
18 legal opinion.

19 MR. WHARTON: And that's all that, that's all we
20 have, Commissioner.

21 COMMISSIONER BRADLEY: Mr. Beck?

22 MR. BECK: Nothing else, Commissioner.

23 COMMISSIONER BRADLEY: Staff?

24 MR. JAEGER: Nothing further.

25 COMMISSIONER BRADLEY: As I mentioned earlier,

1 opening statements shall be limited per party to ten minutes.

2 Let me ask staff a question. Do I need to
3 acknowledge proposed stipulations in any way? .

4 MR. JAEGER: I, I think what happens is at the
5 beginning of -- you know, we put the proposed stipulations in
6 there and you've signed that, and then the Commission rules on
7 those at the beginning of the hearing. But generally, like for
8 staff Witness John Sowerby shall not be required to testify
9 prior to 1:30, if at 9:30 or whenever, when the hearing starts,
10 if the full Commission, they can say, no, we don't want to
11 approve that stipulation, then we would have to get
12 John Sowerby over here, and then the other ones pretty much.
13 But I don't think you have to do anything other than say these
14 are the proposed stipulations and then sign the prehearing
15 officer -- as the prehearing officer.

16 COMMISSIONER BRADLEY: Okay.

17 MR. BECK: And one other thing now that I thought
18 about it, Commissioner, if I might, about the starting time for
19 the hearing.

20 It's my understanding that we're going to convene at
21 9:30 but then recess until 11:00.

22 COMMISSIONER BRADLEY: Recess and reconvene at 11:00.

23 MR. BECK: Thank you.

24 COMMISSIONER BRADLEY: Okay. Mr. Wharton, is that
25 your understanding also?

1 MR. WHARTON: I don't -- I think that we believe the
2 hearing will proceed quickly. My only concern is that I
3 believe that opening statements are likely to be preceded by
4 preliminary matters which we'll need to address such as pending
5 motions. But, I mean, there's not much testimony, so.

6 COMMISSIONER BRADLEY: I agree. And that order is,
7 as appropriate.

8 MR. JAEGER: That's all staff has.

9 COMMISSIONER BRADLEY: Is there anything else to come
10 before the prehearing officer at this time?

11 MR. JAEGER: No.

12 COMMISSIONER BRADLEY: Thank you for your
13 participation, and this, and this concludes the prehearing
14 conference for Docket Number 010503. Thank you again.

15 (Prehearing conference concluded at 10:20 a.m.)
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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 2nd day of MARCH, 2005.

Linda Boles
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