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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION
CLERK

05 MAY - 6 AM 9:45

D-PPSC

In re: Application of Aloha)
Utilities Inc. for an increase)
In water rates for its Seven)
Springs System in Pasco)
County, Florida)

Docket No 010503-WU
May 3, 2005

RESPONSE TO ALOHA UTILITIES, INC.'S
MOTION TO STRIKE
BY
HARRY HAWCROFT AND ED WOOD

On April 27, 2005 Aloha Utilities through its Attorney Mr. John Wharton presented to the PSC a motion to strike certain parts of the post hearing statement made by the above petitioners. In the PSC hearing held on March 8, 2005 Dr Kurien presented direct testimony which was also sponsored by these two petitioners. Due to the pressure of time, rebuttal testimony by Dr Kurien was stipulated:

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CTR _____
ECR _____
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SEC 1
OTH Kim P.

“Chairman Baez: We are on to rebuttal. Dr Kurien, rebuttal witness.

Mr. Wharton: You know Mr. Chairman, I discussed with Mr. Jaeger that he does not have any cross questions and neither do I. May be we could stip Dr Kurien’s rebuttal.

Chairman Baez: Well, with all the cross examining out of the way, is there any reason we can’t stip.

Mr. Beck: Unless the Commissioners have questions.

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Chairman Baez: Commissioners, do you have questions of Dr Kurien on rebuttal? No questions? All right. We will stipulate Dr Kurien's rebuttal testimony into the record.

Does he have exhibits?

Mr. Beck: Yes, VAK-19 through 27

Chairman Baez: VAK 19 through 27, correct

Mr. Wharton: And my objections to those exhibits would only be as before, that I believe some are hearsay in the purest sense.

Chairman Baez: You can reserve those on brief. And that would be VAK. Any objection to a composite exhibit at this point? We didn't do it the first time, but since you have the same objections reserving—

Mr. Wharton: Correct

Chairman Baez – we will do composite 23 will be Dr Kurien's exhibits VAK-19 through 27. And with Mr. Wharton's exceptions noted, we will admit them into the record.” **Transcript March 8 Hearing pages 335-336**

The objections that Mr. Wharton raises in his motion to strike relate almost entirely to an exposition of the significance of Exhibit VAK-19 which was available for cross examination by Mr. Wharton on the day of the hearing. He specifically stated on that day that he had no questions for cross examination relating to Dr Kurien's rebuttal testimony in which he refers in detail to Exhibit VAK-19 and its central role in establishing that “intermittently the water quality is seriously impaired in the distribution system by discoloration, odor and the presence of gas (of undetermined nature)”. Exhibit VAK-19, as Atty. Wharton would have known at that time are copies of Aloha's own flushing records, documented by its own technical staff and obtained by OPC Mr. Beck under a legal subpoena. The sixty pages of this exhibit can be considered hearsay evidence only in a purist legal sense. Anyone who carefully looks through these pages will corroborate the fact that the statements claimed by Mr. Wharton to be “opinion evidence” are indeed “relevant evidence as a reasonable mind would accept as adequate to support the conclusion” drawn in the rebuttal testimony and emphasized in the post hearing statement. The rebuttal testimony and its exhibits were **admitted into the record** with Mr. Wharton's own agreement for stipulation and his admission that he did not see

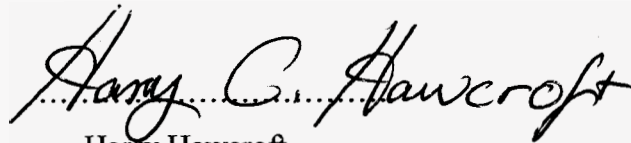
any need for cross examination. Now **ex post facto**, Mr. Wharton is trying to challenge the evidence presented, because to have cross examined Dr Kurien on March 8 would have resulted in Dr Kurien himself giving an extensive exposition of the significance of the flushing records before the Commissioners.

Pages 3-7 of the 'Motion to strike' in which Mr. Wharton quotes extensively from the post hearing statement are an attempt to persuade the Commissioners that they should ignore the cogent arguments presented by the customers that the testing of processed water at the processing facility is inadequate by itself to establish conformity of the water with the same standards at the time of delivery two to three days after processing. In fact, Mr. Wharton wants the Commissioners to accept as demonstrated facts the hypothesis of Mr. David Porter, Aloha's consulting engineer, that deterioration of water quality occurs only within the domestic plumbing and his unsubstantiated speculation that processed water which met the criteria that Aloha itself maintains are sufficient for adequate treatment (low hydrogen sulfide level and free chlorine residual values above 0.2mg/l) is *only partially treated* and therefore detection of hydrogen sulfide in the transmission system above the proposed standard level is not significant! Customers are on much more solid ground in their arguments than Mr. Wharton or Mr. Porter, because they have provided evidence from Aloha's own records to show that Mr. Porter's speculations are "opinion evidence" and not substantial or competent because he has not provided any evidence to substantiate his claims whereas the Aloha flushing records demonstrate that "intermittently water quality is seriously impaired in the distribution system by color, odor and presence of gas".

All the conclusions made in the post-hearing statement are supported by documentation of transcript records of the hearing and audit reports submitted by Aloha's current expert Dr Levine.

Therefore customers Harry Hawcroft and Ed Wood request the Commissioners not to strike any of the sentences in their post hearing statement referred to in the Motion to strike and to give due weight to the evidence that is "sufficiently relevant and material

that a reasonable mind would accept it as adequate to support the conclusion reached”.
Section 120.569(g), Florida statutes further states, “Irrelevant, immaterial or unduly
repetitious evidence shall be excluded, but all other evidence of a type commonly relied
upon by reasonably prudent persons in the conduct of their affairs shall be admissible,
whether or not such evidence would be admissible in a trial in the courts of Florida”.



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**DOCKET NO. 010503-WU
CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a copy of the foregoing has been furnished by
U.S. Mail to the following parties on this 3rd day of May, 2005.



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