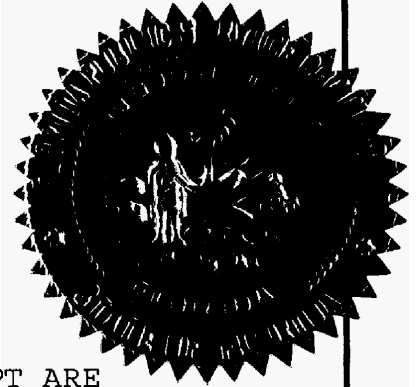


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010503-WU

In the Matter of

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



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 16

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

DATE: Tuesday, May 31, 2005

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

REPORTED BY: JANE FAUROT, RPR
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1 PARTICIPATING:

2 RALPH JAEGER, ESQUIRE, PATTI DANIEL, JOE JENKINS, and
3 TOM WALDEN, representing the Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: We are on Item 16.

3 MS. DANIEL: Commissioners, I'm Patti Daniel on
4 behalf of staff. Item 16 is a post-hearing recommendation
5 addressing the issues raised by the customers' protest of the
6 Commission order requiring Aloha to improve its quality of
7 service. Issue 1 addresses whether the 0.1 milligram per liter
8 criteria should be expressed as a goal or a maximum contaminant
9 level and where compliance should be assessed.

10 Issue 2 addresses whether Aloha should be required to
11 remove the hydrogen sulfide in their raw water as opposed to a
12 treatment process that would convert or oxidize the hydrogen
13 sulfide. Staff has a primary and an alternate recommendation
14 for this issue, and Mr. Joe Jenkins will address the alternate
15 recommendation.

16 Issue 3 addresses the number and frequency of testing
17 necessary to determine compliance with the 0.1 milligram per
18 liter criteria and the reporting requirements.

19 Issue 4 is a legal issue as to whether the Commission
20 has the authority to regulate drinking water standards. Mr.
21 Ralph Jaeger will address that issue.

22 And, Commissioners, we recommend that you go
23 issue-by-issue on this item.

24 CHAIRMAN BAEZ: Commissioners, if there is no
25 objection, I think we will take staff's recommendation on going

1 issue-by-issue.

2 Issue 1, are there questions?

3 COMMISSIONER BRADLEY: Which page is Issue 1 on?

4 CHAIRMAN BAEZ: I'm looking at Page 4, Commissioner,
5 of the recommendation.

6 COMMISSIONER BRADLEY: Just a minute. Okay, I'm
7 ready.

8 CHAIRMAN BAEZ: Very well. Questions?

9 COMMISSIONER DEASON: Mr. Chairman, I don't have a
10 question. I can move staff's recommendation.

11 CHAIRMAN BAEZ: Very well. Do you have questions,
12 Commissioner Edgar?

13 COMMISSIONER EDGAR: Give me just a moment.

14 CHAIRMAN BAEZ: Absolutely.

15 COMMISSIONER EDGAR: I'm trying to understand better
16 the point of sampling. And if the testing or sampling is done
17 at the plant site or field site, how we have the knowledge that
18 the water quality is not somehow being affected by the
19 distribution system. And there is some discussion in the item
20 about it being difficult to do testing or sampling at the
21 meter, or what I think of, basically, as the property line.
22 But there is just such a small amount of information in the
23 item discussion about why or why not the sampling at that meter
24 would be difficult or problematic.

25 So I guess I would like to hear a little more

1 information from staff about why it would not be manageable to
2 do the sampling at that point.

3 MS. DANIEL: Commissioner Edgar, I can take a stab at
4 that, if you would like. The problems with testing at the
5 customer meter are logistic ones. It's going to require, to
6 some degree, messing up the customers' lawns a little bit. We
7 are concerned with the ongoing customer relations between Aloha
8 and the individual customers, and the customers' potential
9 reluctance to have their yard being the one where that testing
10 is occurring. So our concern with the testing at the meter, a
11 great deal of it has to do with logistics. And we believe that
12 the existing bacteriological test sites which are out in the
13 distribution system offer all of the advantages and none of the
14 downside that the testing at the customer meter would offer.

15 CHAIRMAN BAEZ: Go ahead, Commissioner.

16 COMMISSIONER DAVIDSON: Thank you, Chairman.

17 A follow-up question on that. Do we know that if the
18 testing does not occur at the meter that we are not going to
19 hear arguments, or that the Commission is not going to hear
20 arguments down the road that something in the distribution
21 system has polluted the water? The question goes to the issue
22 of if testing is not done at the meter and something can occur
23 from testing point to the home, that issue would still have to
24 be resolved.

25 MS. DANIEL: Commissioners, to say that we don't

1 expect to have any problems would be naive, to say the least.
2 With this case, with the background of animosity between the
3 utility and customers, anything could happen. However, that
4 having been said, we believe that the bacteriological test
5 sites are distributed throughout the system sufficiently and
6 that staff is recommending that enough tests be conducted that
7 we believe we're going to get a good representation of what is
8 going on out in the distribution system, so that it will tell
9 us whether or not that hydrogen sulfide continues to create a
10 problem.

11 COMMISSIONER DAVIDSON: Have any of the customers
12 been surveyed as to whether they would be willing to have
13 testing done at their property, part one; and, part two, have
14 discussions been had with Aloha as to whether they would be
15 willing to test at the meter, but also sort of repair any yard
16 damage that may occur? Meaning they would be responsible for
17 proper testing and not, sort of, tearing up someone's lawn
18 without repairing that.

19 MR. JAEGER: Commissioner Davidson, there is nothing
20 in the record in this case. But in the past we have customers
21 about coming into their yard, and they said no. Not only no,
22 but you know what. And when we did a survey back in 1999, I
23 think it was, we went to some representative customers' homes,
24 and they had volunteered to have us come in, and then several
25 of them complained later because Aloha did not put it back

1 exactly the way it was, and they had to put a faucet up by the
2 meter.

3 So it is not in the record, and it is just the
4 fragile condition of Aloha's relationship with its customers,
5 we were afraid that it would just cause more problems if we
6 tried to find volunteers. And then the volunteers may be
7 clustered, they may be, you know, customers that are -- I think
8 Mr. Wood did testify about the lead and copper being -- there
9 is a big hole in the middle of Trinity where there was not
10 testing. And we were afraid that, again, we would have
11 customers that would volunteer, and we wouldn't get a
12 cross-section like you will get with the bacteriological test
13 sites.

14 So there is that problem with, you know, even if
15 Aloha says they will try, and they could try and they could
16 hire landscaping, they are still going to have to cut into
17 their yard or put up an unsightly faucet or hose bib, or that
18 is possible, and staff just thought that would be a nightmare.

19 CHAIRMAN BAEZ: Commissioner Edgar, did you have
20 other questions? No.

21 I have maybe a couple. In terms of your level of
22 comfort with using the field sites rather than risking the
23 downsides of testing at the meter, I want to try and clear it
24 up in my head. When we speak of testing at the meter, we are
25 always testing not behind the meter, but on the company's side

1 of the meter, is that correct?

2 MR. JAEGER: I believe the way the rule said, it is
3 at the outlet side, behind the meter. But, I mean, it is
4 really -- there is something else that is not in the record,
5 also, about the meters having some, maybe copper flange, but
6 that is not in the record. But, basically, the utility's
7 responsibility is to the outlet side of the meter. But I don't
8 know whether they put the faucet or hose bib on which side of
9 the meter.

10 Tom, do you have something on that?

11 MR. WALDEN: I believe that Mr. Jaeger is correct
12 citing the rule, that the outlet side of the meter is where the
13 company's responsibility ends. I don't think it would make any
14 difference if you tested immediately in front of the meter or
15 immediately behind the meter, you would still need some way to
16 access water from the customer service line.

17 CHAIRMAN BAEZ: I realize that, Tom. But I guess I'm
18 trying to get an idea of -- for us, at least in my mind, to be
19 able to say, you know what, because of the downsides that
20 Ms. Daniel has pointed out, and they are real, I mean, I don't
21 think anyone would dispute that, that even testing at the field
22 sites is a reasonable proxy for what we would all understand
23 the alternative of testing at the meter is. That there is no
24 significant difference between testing at the meter, I mean, in
25 a technical sense, there is no significant difference between

1 testing at the meter and using the field sites. Is that your
2 feeling, is that your level of comfort?

3 MR. WALDEN: Yes, sir, that is exactly the position
4 of staff.

5 CHAIRMAN BAEZ: Okay. Commissioners, I don't have
6 any other questions.

7 COMMISSIONER EDGAR: Just a comment. I do recognize
8 many of the concerns that you have expressed about the
9 logistics, but it just seems to me that it would be in the best
10 interest of all, the company, the customers, the Commission,
11 and anybody else that is interested for there to be additional
12 information available about the water quality at certain
13 junctures of that point where the jurisdiction basically
14 changes, which, again, I view it as at the meter.

15 CHAIRMAN BAEZ: And one more clarification. Does our
16 decision on this issue, and assuming what you all have
17 recommended is adopted, is there any limitation on the
18 establishment of new test sites, new field points, field
19 testing points?

20 MR. JAEGER: I believe we did leave it open about
21 meeting the goal does not relieve Aloha from ultimately
22 addressing the black and smelly water and take additional
23 action as appropriate in the future to address customer
24 complaints. So I think what we were trying to do in the last
25 part of that recommendation was leave it open. And if this

1 isn't working, or something needs more to be done, then we
2 would come back and do more.

3 CHAIRMAN BAEZ: Including additional testing sites.
4 Even though we may not go to the meter as a practical matter,
5 the Commission does retain the authority -- that is an
6 open-ended question, I guess. We can still say, you know what,
7 the testing sites that exist now are not adequate, and we would
8 like to see more, or have them moved around. Is that still our
9 capability?

10 MR. JAEGER: I believe that is what staff was
11 planning, we would come back to you as needed if more needs to
12 be done.

13 CHAIRMAN BAEZ: Commissioners, questions or a motion?

14 COMMISSIONER DEASON: Move staff's recommendation.

15 COMMISSIONER BRADLEY: Second.

16 CHAIRMAN BAEZ: Moved and seconded. All those in
17 favor say aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER DAVIDSON: Aye.

20 CHAIRMAN BAEZ: Aye.

21 COMMISSIONER BRADLEY: Aye.

22 CHAIRMAN BAEZ: All those nay?

23 COMMISSIONER EDGAR: No.

24 CHAIRMAN BAEZ: Okay. Show that four/one.

25 Issue 2.

1 And I guess at the outset, Ms. Daniel, and Mr.
2 Jenkins, if we could have you kind of tee up for us what the
3 differences are. I mean, I can see that they are both going in
4 a certain direction. If you can just point out for us and for
5 the record what subtle differences there may be, or perhaps not
6 so subtle.

7 MS. DANIEL: Commissioners, because of the way the
8 issue is framed, the primary staff recommendation specifically
9 addresses removal or conversion. Some of the staff had some
10 strong feelings about the bottom line, basically, of customer
11 complaints. And Mr. Jenkins developed a recommendation that
12 addressed that bottom-line concern.

13 MR. JENKINS: Yes. Commissioners, on the alternative
14 for Issue 2, it agrees with the primary as far as hydrogen
15 peroxide be given a chance to work. After that, there are
16 three major differences. The first difference in the
17 alternative is focus. While the primary focuses overall on
18 measurement and testing and frequency and testing locations,
19 the alternate focuses on clearing up the smelly water, the
20 black water, reducing that to what is called uncommon
21 occurrence, you might call it a just-fix-it type approach.

22 The second difference is if it is not fixed by
23 November 2006, the company is to begin a removal process.
24 Construction to remove the hydrogen sulfide and to be finished
25 with that construction, including testing and optimization, by

1 November 2007.

2 The third difference is that the design and
3 permitting, and this may be exceptionally controversial, the
4 design and permitting is to begin now so that construction, if
5 needed, can begin on November 2006. And the alternate
6 recognizes that has a cost, and we may waste money, and it may
7 not be needed if hydrogen peroxide does work. Of course, the
8 obvious downside is if hydrogen peroxide does work, then that
9 money spent would have been for naught.

10 The impetus behind this alternative is that any time
11 you have sulfur in the water, whether it is sulfide, sulfate or
12 elemental sulfur, it recombines, transforms in the house,
13 creating black water or smelly water.

14 CHAIRMAN BAEZ: Commissioners, questions?

15 And I appreciate your summary, Mr. Jenkins. And I
16 guess my question is, Ms. Daniel, the primary recommendation,
17 what kind of limitations does it place on the Commission to be
18 able to maintain just fix it as a goal, although I recognize
19 that it doesn't, you know, there is an adoption of conversion
20 as a concept going forward, what kind of ability does the
21 Commission have to convert that, if you will, to one of removal
22 later on down the road under your recommendation.

23 MS. DANIEL: Our recommendation does not go to
24 requiring the utility to use one treatment process versus
25 another with the exception of if they continue to use a method

1 that oxidizes, we recommend that they use a filtration system.
2 This is based on testimony in the record that the turbidity in
3 the water can be relieved using a filtration option. As far as
4 our recommendation, the primary recommendation, leaving you an
5 option to ultimately require them to remove as opposed to
6 convert the hydrogen sulfide, I don't believe that option would
7 be available to you under staff's recommendation.

8 CHAIRMAN BAEZ: And when you say not available to us,
9 it means that we don't have an ability to revisit later down
10 the road?

11 MS. DANIEL: After you vote on this today?

12 CHAIRMAN BAEZ: Uh-huh.

13 MR. JAEGER: I believe that goes back to our
14 recommendation in Issue 1, Chairman, where we were saying we
15 will still be looking at everything, and if something more
16 needs to be done, then we would come back. And these reports,
17 if they have failures or if they still have customer
18 complaints, then we realize this hydrogen peroxide doesn't have
19 a track record, and we are worried about that it won't work,
20 but they have hired two experts who are saying let's give it a
21 chance to work. But we're going to still look, and just
22 because you meet the 0.1 standard doesn't mean that is the end
23 all of end all. And we can come back and look at it if the
24 customer complaints still do not go down.

25 CHAIRMAN BAEZ: Commissioners, other questions or a

1 motion?

2 COMMISSIONER BRADLEY: Well, let me make sure I
3 understand what we're dealing with here. The primary would
4 instruct the company to clean up the water to the extent that
5 it is acceptable, is that correct?

6 MS. DANIEL: The primary recommendation relies on our
7 recommendations in Issue 1 that the company meet the goal of
8 0.1 at the plant sites, and not to exceed the 0.1 goal or the
9 level of hydrogen sulfide in the county water at the field
10 sites.

11 COMMISSIONER BRADLEY: Okay. But the primary --

12 MR. JAEGER: I'm sorry, I didn't mean to interrupt
13 Commissioner. I was just going to say I think the primary
14 difference -- our back-up is to first go to that sulfur
15 filtration, if the hydrogen peroxide isn't working by itself.
16 There are going to be pH and hydrogen peroxide working
17 together. And our deal was have that sulfur in your back
18 pocket ready to go, sulfur removal. And I think Mr. Jenkins,
19 he's saying let's even go farther, let's have them already
20 permitting and planning more removal. And sulfur is sort of a
21 part way removal, it doesn't remove sulfides or the sulfates.

22 So the main difference between the two is we're
23 saying be ready to go with the sulfur filtration, and Mr.
24 Jenkins is saying be ready to go with the removal, with the
25 permitting, have that all done. But I think staff is all, we

1 are all very worried that this hydrogen peroxide may not work.
2 But I think we are all saying they have hired two experts,
3 let's let them try to use those two experts that they have, Mr.
4 Porter and Doctor Levine.

5 CHAIRMAN BAEZ: Go ahead, Commissioner, I'm sorry.

6 COMMISSIONER BRADLEY: Well, if it does not work, how
7 is that going to be dealt with in terms of who pays for it, for
8 the method -- if it works, it's fine, if it doesn't work, who
9 has the financial liability?

10 MR. JAEGER: I think that is Aloha's greatest concern
11 that they might -- that this might be found to be imprudent.
12 But I think what we have always -- rarely do we give it
13 preapproval, but sometimes we do. But they would come in for a
14 rate case and the prudence of the expenses would be reviewed.

15 COMMISSIONER BRADLEY: And I think I heard you
16 correctly. What you are saying is that there is no research
17 that would -- that points to the fact that this method will
18 clean up the hydrogen sulfide.

19 MR. JAEGER: I don't want to say that. Dr. Levine
20 has done lots of research and lots of studies. She has got 30
21 years or more in this area. And this is what she thinks will
22 work with the pH adjustment. And maybe with sulfur -- I think
23 she has toyed with sulfur removal and knows how the filtration
24 for sulfur works, also. But, as it being tried and true with
25 some system, I'm not sure where it has ever been used.

1 CHAIRMAN BAEZ: Mr. Jenkins, you spoke of the
2 downside of going with -- perhaps creating some expenses that
3 would have gone for naught. Do you have an estimate on what
4 those might be? And we're just talking design and --

5 MR. JENKINS: No, I do not. And the only thing I can
6 point to is the study done by Aloha's expert, Mr. Porter, when
7 he looked at all the wells. And when he looked at all the
8 wells, I guess it's standard water and sewer practice to
9 estimate 15 percent for design and permitting. So that would
10 be 15 percent of roughly \$4 million, which would come to around
11 600,000. But that is in 2002 dollars. The costs, obviously,
12 have gone up.

13 CHAIRMAN BAEZ: Right.

14 Commissioners, any other questions or a motion?

15 COMMISSIONER DEASON: I move staff's primary
16 recommendation.

17 COMMISSIONER EDGAR: Second.

18 CHAIRMAN BAEZ: Moved and second. All those in favor
19 say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN BAEZ: Issue 3.

22 MS. DANIEL: Commissioners, this issue addresses the
23 frequency and number of tests and the reporting requirements.

24 CHAIRMAN BAEZ: Questions, Commissioners, or a
25 motion?

1 COMMISSIONER DEASON: Move staff's recommendation.

2 CHAIRMAN BAEZ: There's a motion to accept staff's
3 recommendation. Is there a second?

4 COMMISSIONER BRADLEY: It might be good to have some
5 discussion on this item, because it somewhat goes to the issue
6 that Commissioner Edgar discussed at the beginning.

7 CHAIRMAN BAEZ: All right. Commissioner, if you have
8 got questions, we can entertain them.

9 COMMISSIONER BRADLEY: Well, it is my understanding
10 that this issue gets directly to what Commissioner Edgar was
11 concerned about at the beginning, where should the testing
12 occur, is that correct?

13 MS. DANIEL: Actually, Commissioner, that was
14 addressed in Issue 1, the location of the testing. This issue
15 is basically the ministerial aspects of Issue 1, that being if
16 you have chosen to set a goal using testing at the plant sites
17 as well as the field sites in Issue 1, then how often do you
18 want to take those samples, and how many samples are required?
19 The actual location was addressed in Issue 1.

20 COMMISSIONER BRADLEY: Okay. And so basically what
21 staff has done is to reach a compromise position between the
22 company and the customers?

23 MS. DANIEL: I beg your pardon? I didn't hear you.

24 COMMISSIONER BRADLEY: I said basically what staff is
25 recommending is a compromise position between the two parties,

1 is that correct?

2 MR. JAEGER: I believe that's correct, Commissioner.
3 The utility wanted to test at the plant, the customers wanted
4 to test at the meters, and we found that there may be a problem
5 with doing it at the meters. And so we tried to use the
6 bacteriological test site so there would not be any conflict
7 with the customers, going into their yard. And so it is sort
8 of a compromise provision so we can look at what is going on
9 out in the distribution system.

10 COMMISSIONER BRADLEY: Thank you.

11 CHAIRMAN BAEZ: Commissioners, there is a motion on
12 the floor. And if there is not going to be a second, we can
13 just let it fail and continue discussing. All right. Motion
14 fails for lack of a second.

15 Now we are at a crossroads. Is there an alternative
16 motion, or is there some discussion or further questions that
17 you all would like to entertain?

18 COMMISSIONER EDGAR: Mr. Chairman, I am not sure what
19 the options are that are available to us. I remain concerned
20 that, as I expressed earlier, the sampling scheme that was laid
21 out in option one does not help us get a whole lot further to
22 solving some of the issues that have been brought before us,
23 and that is my concern there.

24 I also have a concern about how we actually test and
25 determine performance based upon a goal. So those are my

1 concerns with the first item. Now, what options that leaves us
2 for Issue 3, I'm unclear.

3 CHAIRMAN BAEZ: Well, not to revisit -- I'm sorry, I
4 heard Commissioner Davidson click. Did you have something to
5 say or --

6 COMMISSIONER DAVIDSON: Sort of along the same lines
7 as I think you were going to articulate. Not to revisit that
8 first issue, but I didn't know if it was to be revisited, if
9 there was any type of consideration that could, perhaps, be
10 given to, sort of, the staff's rec on that issue, but perhaps
11 maybe adding in some type of spot checking at the home. I
12 mean, I don't know if there is a way to address Commissioner
13 Edgar's concern while, sort of, giving weight to the rec.

14 CHAIRMAN BAEZ: And, again, at the risk of revisiting
15 a vote, albeit unofficially, here is the comfort level that I
16 got. This docket has been, and this case has been before us in
17 one form or another for many years. Certainly the problem has.

18 I think the fact that customer relations, or
19 certainly the relationship between the customers and the
20 company is less than optimal. I think that is an
21 understatement. But it is real. And although I think it would
22 be great, and I would agree with you that perhaps testing
23 closer to the meter at the meter would probably render a lot
24 more comfort with the results, and we could all feel more
25 comfortable with the fact that we have gone, certainly on that

1 issue, as far as we can legally in order to ensure results that
2 are accurate and relevant, I'm not sure that in the real world
3 you are not just opening up a whole other can of worms.

4 Because as I will reiterate, I think that the
5 relationship between the company and the customer is not a good
6 one, clearly, and we are playing into that -- to play into that
7 would be, in a way, folly. The reason I asked the questions
8 is, you know, in a technical aspect is using the field sites a
9 reasonable proxy for going to the meter, and if in a technical
10 sense that is true, then I'm not uncomfortable not going as far
11 as you would suggest.

12 To me, even having done that, the need to get as much
13 information as possible, I agree with you. I don't know what
14 function Issue 3 certainly has in terms of getting as much
15 information as possible in light of where the physical
16 limitations that were expressed in Issue 1 are.

17 MS. DANIEL: If I could, Commissioner, let me just
18 offer one other piece of information. And, Commissioner Edgar,
19 while we don't know specifically where those bacteriological
20 test sites are, all of Aloha's wells in Seven Springs are
21 interconnected, so we are talking about a distribution system
22 that permeates the Seven Springs service territory. The
23 bacteriological test sites are going to be in the proximity of
24 the customer meters. It is simply going to be the distribution
25 system that is in the road as opposed to a few feet up into the

1 customer's yard.

2 My guesstimation, as I said before, you are getting a
3 representative sample, it is just at the street and not a few
4 feet into the yard at the meter. I feel like you are not
5 losing much by testing at the bacteriological test sites.

6 COMMISSIONER BRADLEY: Mr. Chairman.

7 CHAIRMAN BAEZ: Commissioner Bradley.

8 COMMISSIONER BRADLEY: You know, the more I listen
9 the more I think that basically what staff has done, again, is
10 to put forth an excellent compromise recommendation as it
11 relates to where the water is going to be tested. And I heard
12 what you said about opening up another can of worms. Because
13 it's my understanding that if you go on the other side of -- if
14 you go on the customer's side of the meter, then what we are
15 going to encounter is, in some instances, PVC pipe, and in some
16 instances copper. And I don't know to what extent that's going
17 to -- how that is going to effect the outcome in terms of what
18 we get as it relates to black water. And the bottom side of
19 that can of worms is who is liable if it is found that the
20 water is acceptable up to the Aloha side of the meter, and if
21 it is unacceptable on the other side of the meter.

22 Would Aloha be liable for black water that exists as
23 a result of the interaction with the pipes going into the
24 customer's home, or would the customer be liable?

25 MS. DANIEL: Commissioners, we are relying on the

1 Florida Administrative Code rules that are clear that the
2 utility is responsible up to the outlet side of the meter for
3 the quality of the water that's produced.

4 COMMISSIONER BRADLEY: So then customer would be
5 liable if it is found that the black water is there because of
6 a chemical interaction with the type of pipe that they have?

7 MS. DANIEL: When you say liable, are you talking
8 about for replacement of pipes and so forth?

9 COMMISSIONER BRADLEY: Yes, Replacement. Yes.

10 MS. DANIEL: Yes, sir, Commissioner.

11 CHAIRMAN BAEZ: But let's be clear that's not
12 something that is before us, necessarily, and that is not
13 something that we are adopting as a result --

14 COMMISSIONER BRADLEY: Right, but that is part of
15 that can of worms.

16 CHAIRMAN BAEZ: Inevitably, yes.

17 COMMISSIONER BRADLEY: So if we take that discussion
18 off the table and just deal with this issue purely from the
19 sense of what is before us, should the water be tested at the
20 site, the well site, or should the water be tested at the
21 meter, or at a field station? And I think staff has suggested
22 that we go with the field station, which is a point in between
23 the two.

24 CHAIRMAN BAEZ: Among other things. Actually, the
25 testing, the frequency and the -- I'm at a loss for the word,

1 but certainly the testing plan, if you will, is actually quite
2 redundant, almost, at times. It is test until you pass, it
3 seems like. So whatever you may think of the location of the
4 testing sites, certainly the plan, it seems to me, is robust in
5 the sense that you go based on the result you get. And until
6 you get a proper result, your obligations to get that result
7 certainly don't end. They, in fact, become even more strenuous
8 and more repeated. That is how I'm reading it, anyway.

9 Commissioner Deason, you had a comment or a question?

10 COMMISSIONER DEASON: Maybe a little of both. It
11 just seems to me that we have already addressed in Issue 1 the
12 point of testing, the location of testing. And I understand
13 there is some concern and some reservation. In fact, it wasn't
14 even a unanimous vote by the Commission. But, nevertheless,
15 that was the decision. Now if we are going to revisit that,
16 I'm not opposed to revisiting it.

17 Issue 3 is just simply -- and there is a lot of
18 information within Issue 3, and staff has done a very
19 comprehensive and thorough job of putting together a
20 recommendation, but it is just really the logistics and the
21 ministerial side of our decision that we made in Issue 1. But
22 it goes to the frequency of the testing, the reporting
23 requirements, a certain number of them have to be within the
24 southern zone. Very important things, but it already assumes
25 that there is going to be testing at the bacteriological field

1 test sites, not at the meter.

2 So if we are going to revisit Issue 1, fine. If we
3 are not, you know, I don't know of a better way of implementing
4 that decision than what staff is recommending within Issue 3.
5 If there is a better way, I'm certainly willing to listen to
6 it. But I think staff has done a very thorough job of putting
7 meat on the bones of that basic policy decision.

8 CHAIRMAN BAEZ: And I would agree.

9 COMMISSIONER BRADLEY: Mr. Chairman, I agree with
10 Commissioner Deason, and by no means am I trying to imply with
11 my questions that I'm trying to revisit Issue 1. I just see
12 the two as intertwined and closely related, and probably
13 somewhat difficult, in my opinion, to separate out. But I
14 agree with what Commissioner Deason has said. We need to try
15 and find a method to deal with this particular -- with Issue 3,
16 even though it is closely related to Issue 1, and I don't know
17 how we get there.

18 CHAIRMAN BAEZ: With all that said, Commissioners, I
19 guess I will entertain a motion.

20 And, Commissioner Deason, having heard all of the
21 discussion, certainly if you would make your motion again, I
22 could support it.

23 COMMISSIONER DEASON: I will move staff's
24 recommendation on Issue 3.

25 COMMISSIONER BRADLEY: And I will second it.

1 CHAIRMAN BAEZ: There is a motion and a second. All
2 those in favor say aye.

3 COMMISSIONER BRADLEY: Aye.

4 CHAIRMAN BAEZ: Aye.

5 COMMISSIONER DEASON: Aye.

6 COMMISSIONER DAVIDSON: Aye.

7 CHAIRMAN BAEZ: All those nay?

8 COMMISSIONER EDGAR: No.

9 CHAIRMAN BAEZ: Okay. Show that four/one.

10 Issue 4.

11 MR. JAEGER: Commissioners, Issue 4 was added at
12 Aloha's request about whether we had the legal authority to do
13 what we are doing here today.

14 COMMISSIONER DEASON: I have a question for staff.

15 CHAIRMAN BAEZ: Commissioner Deason.

16 COMMISSIONER DEASON: I'm just at a loss as to why
17 Aloha would raise this issue at this point. It was their
18 petition asking us to modify the standard. And so if we don't
19 have the authority to do what staff is recommending, we don't
20 have the authority to even entertain their petition, it seems
21 to me, in a very simplistic approach of looking at it, I
22 suppose.

23 MR. JAEGER: I believe you always have the authority
24 to determine whether you have jurisdiction. And I think you
25 already did that when you issued the other order. It went up

1 on appeal. Aloha raised the question on appeal. Although it
2 was a per curiam affirmed, they still affirmed that order, and
3 that is all that staff is saying. You have already --

4 COMMISSIONER DEASON: And that was the 98 percent
5 requirement, and Aloha thought that that was inappropriate and
6 petitioned this Commission to change that.

7 MR. JAEGER: Yes.

8 COMMISSIONER DEASON: And if we take their position,
9 we don't have the jurisdiction to entertain their petition, so
10 we are back to 98 percent -- if we take their position, we are
11 back to the 98 percent, because that has been affirmed by a
12 court. Am I missing something?

13 MR. JAEGER: I see where you're going now,
14 Commissioner. I hadn't really thought of it that way, but,
15 yes, we were at the 98 percent standard and it has been
16 affirmed by the court.

17 COMMISSIONER DEASON: I'm just at a little bit of a
18 loss, Mr. Chairman. But if there are no further questions, I
19 can make a motion.

20 CHAIRMAN BAEZ: If you want, please.

21 Are there any other questions, Commissioners?

22 COMMISSIONER BRADLEY: I think we have jurisdiction.

23 CHAIRMAN BAEZ: We'll just answer the question in
24 Issue 4.

25 COMMISSIONER DEASON: I can move Staff's

1 recommendation on Issue 4.

2 COMMISSIONER EDGAR: Second.

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

5 (Unanimous affirmative vote.)

6 CHAIRMAN BAEZ: Does that -- that is the last issue,
7 isn't it?

8 MS. DANIEL: There was a stipulation as to close the
9 docket. The docket will remain open pending the outcome of a
10 refund.

11 CHAIRMAN BAEZ: Do we need to vote on accepting the
12 stipulation? No, right? Yes? No?

13 MR. JAEGER: That wasn't an issue. It was at the
14 hearing, and actually when we read the transcripts, you didn't
15 exactly vote on that stipulation, although the parties were
16 agreed. And it was not clear from the record that you voted on
17 that stipulation.

18 CHAIRMAN BAEZ: Well, Commissioners, there is a
19 stipulation to close the docket. If anybody wants to entertain
20 a motion now just so that we can tie it up in a nice little
21 bundle.

22 MR. JAEGER: The stipulation was that the docket had
23 to remain open for the refund process that is on appeal. That
24 was the stipulation.

25 CHAIRMAN BAEZ: That is the stipulation, and your

1 recommendation on the stipulation would be to accept it?

2 MR. JAEGER: Accept it.

3 CHAIRMAN BAEZ: Commissioners, is it clear to you on
4 what we need to vote on just to close this out? The docket is
5 not going to be closed, it will remain open in order to deal
6 with whatever refund issues are outstanding. And the parties
7 are in agreement, it is a stipulation after all.

8 COMMISSIONER DEASON: Is a vote necessary?

9 MR. JAEGER: It might be good. Because it was
10 unclear, when I went back on the record, that you all never
11 voted on that stipulation, you never voted it out. You were
12 aware of it, and then we got sidetracked on something else and
13 the vote was never made.

14 CHAIRMAN BAEZ: Imagine getting sidetracked on this
15 docket.

16 COMMISSIONER DAVIDSON: Move to accept the parties'
17 stipulation.

18 CHAIRMAN BAEZ: There is a motion. Is there a
19 second?

20 COMMISSIONER BRADLEY: Second.

21 CHAIRMAN BAEZ: Moved and seconded. All those in
22 favor say aye.

23 (Unanimous affirmative vote.)

24 CHAIRMAN BAEZ: Thank you all. Thank you for all
25 your hard work.

(Agenda Item 16 concluded.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 3rd day of June, 2005.



JANE FAUROT, RPR
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