

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR INCREASE IN WATER RATES FOR SEVEN SPRINGS SYSTEM IN PASCO COUNTY BY ALOHA UTILITIES, INC. DOCKET NO. 010503-WU

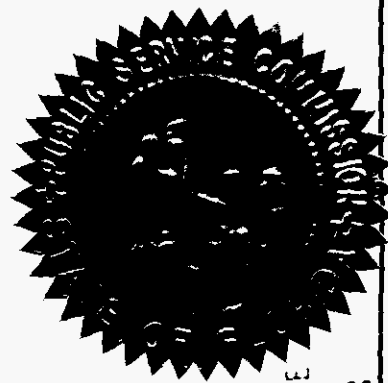
PROGRESS REPORTS ON IMPLEMENTATION OF ANION EXCHANGE IN PASCO COUNTY, FILED BY ALOHA UTILITIES, INC., PURSUANT TO ORDER PSC-06-0270-AS-WU. DOCKET NO. 060606-WS

JOINT PETITION FOR APPROVAL OF STIPULATION ON PROCEDURE WITH OFFICE OF PUBLIC COUNSEL, AND APPLICATION FOR LIMITED PROCEEDING INCREASE IN WATER RATES IN PASCO COUNTY BY ALOHA UTILITIES, INC. DOCKET NO. 060122-WU

JOINT NOTICE BY ALOHA UTILITIES, INC. AND THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY OF TRANSFER OF WATER AND WASTEWATER ASSETS TO THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY, IN PASCO COUNTY, AND CERTIFICATE NOS. 136-W AND 97-S. DOCKET NO. 090120-WS

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 13

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP



DOCUMENT NUMBER-DATE
04163 MAY-48

FPSC-COMMISSION CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATE: Tuesday, April 21, 2009

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

1
2 CHAIRMAN CARTER: With that, Commissioners,
3 let's give staff an opportunity to get ready for Item 13.
4 I think we also have a visitor. Mr. Forehand, I believe,
5 is with us.

6 Mr. Reilly, come on down. Let's give everybody
7 a chance to get settled in here. I did see Steve Reilly,
8 didn't I?

9 MR. REILLY: I'm here.

10 CHAIRMAN CARTER: There he is.

11 Commissioner Skop.

12 COMMISSIONER SKOP: Thank you, Mr. Chairman.

13 Does staff know if Mr. Armstrong for FGUA is
14 going to be present --

15 MR. JAEGER: I talked to -- this is Ralph
16 Jaeger, Legal Staff. And I talked to Mr. Armstrong last
17 week, and he said he was going to be out of town Monday
18 through Thursday of this week, at least through Thursday.

19 COMMISSIONER SKOP: All right. Thank you.

20 CHAIRMAN CARTER: Thank you.

21 Let's let everybody get settled in before we
22 kick off here.

23 Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Mr. Chair.

25 I may have some questions regarding that

1 because, again, I think that unless Legal Staff has taken
2 the foresight to get Mr. Armstrong's concurrence on one
3 particular issue, there may be an issue in him not
4 appearing today.

5 CHAIRMAN CARTER: Okay. Well, let's cross that
6 bridge when we get to it.

7 One second, Bart. Give Ralph an opportunity.

8 Is everybody ready? Staff, you're recognized.

9 MR. FLETCHER: Commissioners, I'm Bart Fletcher
10 with Commission staff.

11 Item 13 involves four dockets for Aloha
12 Utilities, Inc. Staff's recommendation addresses the
13 Commission's jurisdiction over an escrow account related
14 to interim collection -- interim rate collection, the
15 appropriate disposition of those escrowed funds, the
16 acknowledgment of the sale of Aloha's assets to the
17 Florida Governmental Utility Authority, and the
18 disposition of all outstanding Aloha dockets.

19 Staff filed a revised recommendation yesterday
20 to reflect additional language added to Issues 1 and 5.
21 Copies of the revised recommendation have been provided to
22 the Commissioners and parties.

23 Mr. Wayne Forehand, a customer, Mr. Steve Reilly
24 of the Office of Public Counsel, and Aloha counsels,
25 Mr. John Wharton and Mr. Marty Deterding, are here to

1 address the Commission. Staff is available to answer any
2 questions the Commission may have.

3 CHAIRMAN CARTER: Staff, did you tell the
4 parties what order that they would be speaking in, or did
5 you just flip a coin? How did you do that?

6 We do want to hear from all three. Go ahead.

7 MR. FLETCHER: I would suggest Wayne Forehand
8 first, followed by OPC, and then the utility.

9 CHAIRMAN CARTER: Thank you.

10 Mr. Forehand, good morning. You're recognized,
11 sir.

12 MR. FOREHAND: Thank you, Commissioners. I'm
13 Wayne Forehand of 1216 Arlinberg (phonetic) Drive, a past
14 customer of Aloha Utilities, now a customer of the FGUA.

15 The FGUA customers of Trinity and Seven Springs
16 are elated to have a new water operator replacing the old
17 Aloha Utilities. The Aloha customers have had to endure
18 for many years disgusting black water and shameful
19 customer service. The new operator has already made
20 incremental improvements that could have been implemented
21 years ago by a competent water utility operator.

22 The customers are now appalled that Aloha
23 Utilities management and stockholders, after profiting
24 substantially from the sale of the utility, would come
25 back to continue haunting the customers by removing the

1 customers' money from the escrow account and continuing
2 their manipulative legal antics.

3 The customers are grateful to the PSC staff for
4 aggressively pursuing the successful return of the
5 customers' refund to the rightful escrow account for the
6 customers. Yes, I said the customers' refund, because the
7 settlement agreement contains protection for the customers
8 and this refund. It requires Aloha to construct the Anion
9 system and then unsuccessfully operate the system for one
10 year before they can get Phase III rate increases.

11 The settlement agreement also says that after
12 the Phase III rate increases, then the escrow could be
13 released to Aloha. Accordingly, Aloha has no claim to the
14 customers' escrow account, and we request to see that
15 refund escrow account transferred to the control of the
16 FGUA for the purpose of establishing a rate stabilization
17 account for the benefit of the customers.

18 We agree with the staff recommendation except
19 where they say based on the principle of finality, staff
20 recommends \$74,239 of the customers' refund be given to
21 the utility. This is not proper. It's not palatable to
22 the customers, and attorney Steve Reilly from the OPC will
23 give further explaining why this is not legally proper.

24 Next. On the escrow, the escrow statement
25 reflects that the customers are now getting one quarter of

1 a percent interest on this account. I would never invest
2 or deposit \$370,000 into an account getting one quarter of
3 a percent interest. This is what Aloha has done.

4 My son's trust money market fund, which is the
5 lowest I have, pays 1.8 percent. GMC Bank savings account
6 pays 2.25 percent. What interest were we getting before
7 Aloha took this money out? Was there a penalty when Aloha
8 took this money out that decreased the value of this
9 account? The penalty, if there was a penalty, and to make
10 up for these low interest rates there should be some
11 penalty paid by the utility for taking the -- for the
12 unauthorized taking of the customers' funds. And with
13 that, I'll say -- I'll turn it over to our attorney, Steve
14 Reilly.

15 CHAIRMAN CARTER: Thank you, Mr. Forehand.
16 Give Mr. Reilly a moment.

17 MR. REILLY: May I hand these out?

18 CHAIRMAN CARTER: Yes, sir.

19 Mr. Reilly, you're recognized.

20 MR. REILLY: Thank you very much.

21 First, on the threshold issue of jurisdiction,
22 the Office of Public Counsel strongly agrees with staff
23 that the Commission has continuing exclusive jurisdiction
24 to determine the final disposition of this escrow account.
25 We agree with each and every substantial legal authority

1 that the staff has provided to the circuit court and to
2 the Second District Court of Appeals. They have put a
3 tremendous amount of work into this thing and it is very
4 persuasive to us. It was, in fact, persuasive enough to
5 the Second District Court of Appeals that they felt that
6 the -- that they, in fact, issued an order to Aloha to
7 show cause why they should not prohibit the circuit court
8 from even considering anything to do with this escrow
9 account. That's how substantial the argument was before
10 the second district court.

11 Obviously, it's up to Aloha now by Wednesday, by
12 tomorrow, to offer to the district court its reasons why
13 the Commission doesn't have this jurisdiction. We'll see
14 how that plays out.

15 But, anyway, first of all, I think we are
16 properly here in Tallahassee deciding this matter before
17 the right entity. Now, as to the substance of the matter,
18 we basically pretty much agree with everything staff has
19 done in its recommendation with very few exceptions. And
20 one is the recommendation that the Commission go ahead and
21 permit the company to keep 74,000-some-odd-dollars of the
22 escrow account because of prior orders, prior
23 pronouncements of this Commission that went unappealed,
24 and under the argument of administrative finality really
25 should not revisit those issues.

1 And I think those are pretty persuasive
2 arguments, and it would be difficult to revisit those
3 issues but for the fact that Aloha did it for us. I
4 believe Aloha has only itself to blame for giving up these
5 escrow funds to the company. And they did this in two
6 ways: They kept the docket alive. They kept that docket
7 alive with all of its litigious and repeated appeals so
8 that the docket stayed alive, the escrow account stayed
9 alive, it continued to accrue interest.

10 So that kept it before this Commission and kept
11 it not having been disposed of. So it's a series of --
12 Aloha exercising its rights to appeal various Commission
13 orders has kept this matter before this Commission.
14 That's action number one.

15 Then the second action was Aloha's decision to
16 sell to a governmental entity. Once they took the second
17 action, I believe that a statute trumps the Commission's
18 earlier orders that delineated the methodology for
19 determining interim refunds as to those four months of the
20 rate case period. And by trumping it, that statute which
21 is right before you says the minute that happens, if there
22 is a case that is still open, you don't do any more
23 methodology, you don't do any more calculations. All of
24 the interim monies, all the monies subject to interim
25 refund are to be fully and completely given back to the

1 customers.

2 So Aloha did for us what we could not have done
3 for ourselves by both their appeals, keeping it alive, and
4 then deciding -- and you can't feel sorry or Aloha. I
5 mean, they walked away with \$90.5 million. So by doing
6 away with the \$90.5 million, they, in effect, triggered
7 this statute which said, okay, once you have sold it, then
8 all interim refunds -- it says very clearly, not
9 discretionary, must be refunded to the customers. So I
10 don't believe any of this money should go back to Aloha.

11 Now, what do we do with the money? Do you, in
12 fact, refund it? I think it is customer monies, it should
13 be refunded to them, but I'm inclined to defer to the
14 customers what to do with this money. You have a real
15 administrative problem and a difficulty of affecting a
16 refund at this late juncture. Five years out, many, many
17 customers have left the scene, both have died as well as
18 moved away. Administratively it's going to be very
19 difficult to implement the refund. And, of course, the
20 customers are facing substantial rate increases. They
21 have come forward and said we would like this to be put in
22 this rate stabilization fund dollar-for-dollar to get a
23 full CIAC benefit of it. And where our motion in response
24 to what Aloha filed asked for refunds, I think that is the
25 good clean thing to do.

1 But to, at this point, try to make -- it's hard
2 enough to make Aloha do things when they want to do it,
3 but when they don't want to do it, to actually implement
4 and make them properly implement this refund at this
5 juncture, now that they are no longer a utility, is highly
6 problematic. And we have the added problem of
7 nonjurisdictional FGUA saying although they will be happy
8 to accommodate the Commission and implement this rate
9 stabilization account, again, they are not here to say
10 this, but we have heard secondhand that they have no
11 intention of implementing any -- trying to figure out
12 everything and figure out this refund. So we don't think
13 we practically have someone available to implement the
14 refund. So to give the customers full 100 percent
15 benefit, let it be available to offset any future rate
16 cases.

17 The initial rate increase that the customers are
18 facing as a result of this FGUA purchase is to, of course,
19 bear a substantial rate increase to fund the purchase of
20 the utility, 90.5 million, plus another \$12 million as
21 part of the FGUA funding to fund what FGUA determines is
22 the solution to the black water problem.

23 So this very substantial rate increase has
24 already hit the customers. So the only way they are going
25 to get a benefit, a CIAC benefit is to have this little,

1 small pool of money to offset some future problem. And
2 that's what the customers came up with. We thought it was
3 credible, we thought it was reasonable, and so we support
4 that. So we stand to support the staff, except for the
5 disposition of that 74,000.

6 Lastly, on Issue 5. I think this Commission can
7 properly, today, without further delay, acknowledge the
8 transfer to FGUA under (6). And I now draw your attention
9 to your rule that deals with transfers of governmental
10 entities. And under your Rule 25-30.037(6), it says,
11 "Upon the receipt of the items required in 4A, B, C, D, E,
12 and F the Commission will issue an order acknowledging
13 that the facilities or portion thereof have been acquired
14 by a governmental authority."

15 I will just represent that I think A, B, C, D,
16 E, and F have been met. So that's okay. But when you get
17 to (7) that is a whole different matter. And that is
18 where it says upon the receipt of items required in 4G and
19 H, which I'm going to talk about, the utility's
20 certificate will be canceled. And so then you go to G and
21 F and you'll see that they have to have a statement
22 considering the disposition of customer deposits and the
23 interest thereon, that's G, and H is a statement regarding
24 the disposition of any outstanding regulatory assessment
25 fees, fines, or refunds owed.

1 So I would suggest that the Commission refrain
2 from canceling the certificate of Aloha until four things
3 occur: Until the Commission is satisfied that there has
4 been a final disposition of the escrow account and
5 resolution of that issue; number two, that the company
6 file its 2008 annual report so we can understand enough
7 about the company to make sure they are even paying the
8 right monies when it comes to verifying the accuracy of
9 the 2008 and the 2009 regulatory assessment fees, that's
10 three; and, four, verify the accuracy of the statement
11 described in the disposition of customer deposits.

12 Because in your staff recommendation staff says,
13 and I quote, in the staff analysis under Issue 5 it says,
14 "The application contains a statement that the utility has
15 credited customer deposits to final bills or refunded
16 excess deposits to customers." And here is the key
17 sentence, "Therefore, no customer deposits or accumulated
18 interest will be transferred to FGUA." I think that is
19 factually untrue.

20 Again, unfortunately, Brian Armstrong is not
21 here, but we understand that, in fact -- but Aloha is
22 here -- have, in fact, transferred about \$750,000 of
23 customer deposits from Aloha to FGUA to handle the future
24 liabilities of customer deposits. So I really think we
25 may not have a problem in this transfer with regard to

1 customer deposits, but it's incumbent upon us to verify
2 all of this; to verify that under your rule that the
3 matters of customer deposits are resolved before you
4 finally cancel your certificates. Once you cancel out
5 your certificates, it's goodbye Aloha. Then they are
6 gone, they have no jurisdiction.

7 So really those are the four things you should
8 do before you cancel the certificate. Resolve the escrow
9 account; make them file their 2008 annual report; verify
10 the accuracy of what they paid you in regulatory
11 assessment fees for 2008 and 2009; and, finally, verify
12 the accuracy of the customer deposits. With those two
13 small additions, we fully support staff. Thank you.

14 CHAIRMAN CARTER: Thank you, Mr. Reilly.

15 Now for the company. Let's hear from the
16 company and we'll come back. For the company, who --

17 MR. WHARTON: Chairman Carter, John Wharton and
18 Marty Deterding on behalf of Aloha.

19 CHAIRMAN CARTER: You're recognized.

20 MR. WHARTON: Thank you.

21 I know, Mr. Chairman, you didn't necessarily
22 proceed issue-by-issue, but I have come to address the
23 issues related to Issue 1, Mr. Deterding the other issues.

24 CHAIRMAN CARTER: You may proceed.

25 MR. WHARTON: So with your permission.

1 CHAIRMAN CARTER: That will be fine.

2 MR. WHARTON: Two matters that I would
3 characterize as housekeeping. One is that I would have
4 had a discussion with staff counsel prior to this item
5 coming up about putting the order that the Commission
6 issued that incorporated the settlement agreement that is
7 at the heart of the controversy about the monies
8 incorporated by reference and approved it. That order is
9 PSC-06-0270-AS-WU. To the extent that order and the
10 attachment are not part of the record of this proceeding,
11 I would like to put them into the record in this
12 proceeding. I think staff counsel feels they are in the
13 record in this proceeding.

14 CHAIRMAN CARTER: Mr. Jaeger.

15 MR. JAEGER: I believe the Commission just
16 always recognizes its own orders, so that order is an
17 order of the Commission, and we are aware of it.

18 MR. WHARTON: I would request you recognize that
19 for the purposes of the record in this proceeding, then.

20 CHAIRMAN CARTER: Show it done. You may
21 proceed.

22 MR. WHARTON: Okay. The only other thing that I
23 would like to quickly do is to -- you know, Commissioner
24 Skop has indicated that he would like to hear -- he might
25 decide that he wants to hear from the FGUA. You have

1 heard a reference from Mr. Reilly about the matter that is
2 pending in front of the Second District Court of Appeal.
3 That district court is going to be deciding whether or not
4 to issue a writ of prohibition against the circuit court
5 for Pasco County, specifically Judge Mills.

6 We would like to request that this matter, as it
7 relates to Issue 1, be abated until the district court
8 rules so that we do avoid the parallel jurisdiction and
9 parallel proceedings. And that's just a request that you
10 could take up in the ordinary course of business, but I'd
11 like to make it.

12 MR. IMHOF: Mr. Chairman, I don't believe we
13 want to do that at this time.

14 CHAIRMAN CARTER: Okay. Thank you.

15 You may proceed.

16 MR. WHARTON: Okay. I will very briefly address
17 the remarks of Mr. Reilly. You know, there's a lot of
18 argument that the Commission is making in the circuit
19 court, and before the district court of appeal, and today
20 in staff's recommendation about what has happened. The
21 escrow agreement, the orders, the agreement between the
22 parties, what it means. And yet Mr. Reilly has come to
23 you and said the fact there was a sale means one order
24 just goes poof. The one the staff has said is final and
25 unappealed and under which staff believes that \$74,000 has

1 already been determined by the Commission by a prior order
2 that should be released to Aloha.

3 I think if you are going to modify that order
4 today as you have been asked to do, you need to make sure
5 that you've got the reasons. Administrative finality
6 isn't just a doctrine that you can change your mind
7 because the docket is still open. If you are going to
8 modify that order, it needs to be done properly. And I
9 don't think you have been given any reason to modify that
10 order. In that regard, we would agree with staff.

11 I also want to say with all due respect,
12 Commissioners, we do categorically reject that Aloha
13 remains jurisdictional to the Commission until the day you
14 decide we're not. We just think that is determined by
15 another factor.

16 But to briefly wrap up, because we are in a bit
17 of a unique position. While you are proposing action in
18 some respects, talking about issuing an order in another,
19 we are in a current litigation, and that does have an
20 effect on the presentation that I make. So all I want to
21 say in that regard is I believe the positions of the
22 parties are clear. I believe that the staff
23 recommendation and the action that we anticipate the
24 Commission will take today is the action that we
25 anticipated.

1 It is Aloha's position that the settlement
2 agreement and the order incorporating the settlement
3 agreement earmarked these funds to defray monies spent on
4 the Anion project, and that Aloha made expenditures in
5 reliance on that provision of the order and the others.
6 That if the Commission accepts staff's recommendation, it
7 will not be honoring the spirit and intent of that order,
8 and that Aloha believes the circuit court is the
9 appropriate place, given Aloha's present jurisdiction, to
10 resolve these issues.

11 Whether we are right or whether we are wrong,
12 that's our position. We have no hidden agenda, and that's
13 where we believe the issue and the disposition of the
14 monies should be addressed.

15 CHAIRMAN CARTER: Hang on, Mr. Reilly. Hang on.
16 Hang on. Hang on. Now, your colleague was going to
17 address the other issues?

18 MR. WHARTON: Yes.

19 CHAIRMAN CARTER: You're recognized.

20 MR. DETERDING: Thank you, Mr. Chairman.
21 Commissioners, F. Marshall Deterding here on behalf of
22 Aloha. I'm here really to address Issue 6, which is
23 probably the most noncontroversial issue before you. It
24 deals with the annual report.

25 Aloha has not filed its 2008 annual report and

1 has indicated to the Commission staff its intent not to do
2 so. I want to get into not so much the reasons for that,
3 but why the Commission may need that annual report in my
4 discussions with the Commission staff subsequent to the
5 issuance of this recommendation.

6 In an attempt to try and resolve this issue
7 short of litigation on yet another front, I have talked to
8 members of the staff, tried to determine what they need,
9 why they need it. As you may or may not be aware, Aloha
10 has filed its regulatory assessment fee report for the
11 first half of 2008 timely and paid the fees for the first
12 half. It timely filed the report for the second half of
13 2008 in January and paid the fees at that time, and then
14 on April 6th it filed the final regulatory assessment fee
15 report and paid the fees for January and February up
16 through the date of closing on the 27th.

17 The staff has indicated in their recommendation
18 and to me that the primary, if not exclusive reason for an
19 annual report in this circumstance is to help them to
20 verify the regulatory assessment fee figures. Aloha no
21 longer has any staff other than two officers. It doesn't
22 have the people available for it to prepare an annual
23 report. If Aloha had sold on December 30th of 2008, it
24 would owe regulatory assessment fees for 364 days, but
25 would have no obligation to file any report other than the

1 regulatory assessment fee one-page report.

2 In our efforts to try and resolve this issue and
3 provide the staff with what it needs, we have tried to
4 determine what items within the annual report would assist
5 the staff in verifying the regulatory assessment fees,
6 which is the stated purpose. We have agreed with staff
7 that several pages, only a few pages actually address that
8 issue. The staff has indicated that Pages W-3, S-3, W-9,
9 S-9, the cover sheet, and the affirmation would resolve
10 their concerns about what is needed in order to review
11 regulatory assessment fees. Those twelve pages we told
12 staff we thought we could put together in relatively short
13 order, and we stand ready to do so if that will resolve
14 this issue.

15 CHAIRMAN CARTER: Thank you.

16 Commissioner Argenziano, you're recognized.

17 COMMISSIONER ARGENZIANO: What I was going to
18 ask the staff to -- is to verify. Is there any
19 verification that Aloha has sent the deposits to FGUA?

20 MR. FLETCHER: We only have the statement in
21 their application that they were going to. What it says
22 in the application is in their first bill that they were
23 going to be responsible for they were going to make the
24 credits and give back the refunds.

25 Just before agenda started, I spoke with Aloha

1 counsel saying that the money was -- about 750,000 was
2 given to FGUA in order to -- basically it is just a
3 continuation given to them to take care of it. What they
4 had at the date of the sale was just transferred over,
5 and, basically, for the FGUA to continue on and to make
6 refunds, as necessary, based on their time of being a
7 customer. Since their customer record, there is a certain
8 amount of time when a refund is made, since you first sign
9 up, and they basically just transferred that to FGUA is
10 what we are hearing from Aloha this morning.

11 COMMISSIONER ARGENZIANO: What we are hearing,
12 but we don't have any verification.

13 MR. FLETCHER: No.

14 MR. DETERDING: May I address that briefly?

15 CHAIRMAN CARTER: Briefly; ever so briefly.

16 MR. DETERDING: Okay. I just wanted to let you
17 know what did transpire as far as the customer deposits.
18 As stated in the contract, a credit was intended to be
19 given. The utility came to the closing ready to give that
20 credit as part of the final closing. Instead, the FGUA
21 asked that a check be issued for the amount of money that
22 equaled all customer deposits plus interest, so that FGUA
23 could just take over and the status quo be maintained with
24 regard to those customer deposits. Either whether it had
25 been as a credit or as a check, it didn't matter, it was

1 going to be the same thing. But the point is it was done
2 as part of the closing in the form of a check.

3 CHAIRMAN CARTER: Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: How do we know? I
5 would like to verify. Would that come in in an annual
6 report, if the annual was --

7 CHAIRMAN CARTER: Mr. Willis.

8 MR. WILLIS: Commissioner Argenziano, we could
9 verify that, but we also have confirmation from the FGUA
10 through an e-mail from Brian Armstrong that indicates that
11 what Mr. Deterding said is true, that they have taken
12 possession at closing of the remaining deposits.

13 And, in fact, we know that they actually have
14 checked on one of the refunds from one of the customers
15 out of concern, and showed the customer where the refund
16 was actually made in December for their one customer
17 deposit, so we believe that is true.

18 COMMISSIONER ARGENZIANO: Okay. Well, that is
19 good to know, but do you know what the amount was? Is it
20 the full refunds of all the deposits?

21 MR. WILLIS: Mr. Armstrong did not indicate what
22 that was, but we can verify that. We can do that.

23 COMMISSIONER ARGENZIANO: I think verification
24 would be important, not for anything other than just --

25 MR. WILLIS: That's not a problem. We can

1 verify it.

2 COMMISSIONER ARGENZIANO: Okay.

3 CHAIRMAN CARTER: Commissioner Skop.

4 COMMISSIONER SKOP: Thank you, Mr. Chairman.

5 I have several concerns, and I think that I want
6 to tee those up for discussion. First and foremost, in my
7 briefings with staff -- again, I'm disappointed that
8 Mr. Armstrong is not here. We, as staff knows, do not
9 have jurisdiction over FGUA, and if we are going to ask
10 FGUA to do something, to be the administer of a refund or
11 to hold a refund, we need their verbal commitment to do
12 so. And we don't have that, as far as I know, unless
13 staff has produced an e-mail record.

14 So, again, I would like to ask staff because,
15 again, one of my concerns is making sure that we had FGUA
16 here before us so I could ask some questions.

17 MR. JAEGER: Commissioner Skop, Ralph Jaeger.

18 I've talked with Brian Armstrong on several
19 occasions, and the first thing we asked him is would they
20 be willing to go along with the Citizens' request that the
21 funds be placed in a rate stabilization escrow account.
22 He said, yes, they would do that. And they sent us a
23 letter. It has been placed in the docket file, and they
24 said they would use those monies for the benefit of the
25 Aloha customers and place them in that escrow account.

1 Then the next thing we asked him, would they be
2 willing to do the refund if it came down to that, if they
3 would take the records. And he said no, they would not be
4 willing to do that.

5 COMMISSIONER SKOP: Okay. Well, I guess I'm a
6 little disappointed, because that goes to my point, and
7 that is a direct -- I'm very disappointed right now,
8 because that comes as a complete surprise to me. That is
9 the sole purpose why I wanted Mr. Armstrong here, and I
10 feel like our staff is not responsive to a legitimate
11 concern expressed by a Commissioner, so let me get to that
12 point.

13 I respectfully disagree with the staff
14 recommendation as to the creation of a rate stabilization
15 account. I respect, Mr. Forehand, your position. I
16 respect OPC's position. I support a refund. The crux of
17 the matter is we have no jurisdiction over FGUA, any
18 continuing jurisdiction over FGUA. And at the appropriate
19 time I would move that any refund ordered by this
20 Commission be returned as a one-time credit or refund to
21 the customers as of the date of record -- I mean, the
22 customer's record as of the date of this hearing.

23 And, again, that's based on two-fold; one, we
24 don't have jurisdiction over FGUA. And I completely
25 disagree with the intergenerational argument that Mr.

1 Reilly tried to mention to the extent that we don't know
2 how long this rate stabilization account is going to be
3 around and we don't have any jurisdiction over it. So to
4 me the important thing is to get this refund money back to
5 the consumers as quickly as possible. And I completely
6 feel that although I have expressed that and expressed a
7 desire to have Mr. Armstrong here to get that commitment,
8 again, I was not listened to by our staff, and I'm very
9 disappointed with that.

10 The second part --

11 CHAIRMAN CARTER: Hang on, Commissioner. Hang
12 on for a second. In relation to the refund, Mr. Forehand
13 wanted to address that issue.

14 Mr. Forehand.

15 MR. FOREHAND: Yes, I did. You know, we have
16 had a very good working relationship with the FGUA and
17 Brian Armstrong, and the customers feel very confident
18 with their organization.

19 Commissioner, if you don't feel comfortable with
20 FGUA holding it, perhaps there is an alternative of where
21 this can go. Perhaps it could be held by the PSC in
22 conjunction with FGUA. It would be a joint -- or the OPC.

23 COMMISSIONER SKOP: Mr. Forehand.

24 MR. FOREHAND: Yes.

25 COMMISSIONER SKOP: Just to make it abundantly

1 clear. I'm in favor of a refund. The problem I'm seeing
2 is that, you know, we have no continuing jurisdiction over
3 FGUA as a quasi-governmental entity that we don't
4 regulate, okay. So if we've learned any lessons from this
5 on-going saga that has spanned decades long, it's use your
6 jurisdiction while you have it. And to me the important
7 thing is get this money in difficult economic times, these
8 interim rates that are held in escrow, refund those
9 amounts to the customers as of record as of this date and
10 get that money as a one-time credit back to the customers.
11 That way the Commission doesn't involve itself in future
12 disputes that may arise between your group, FGUA, or rates
13 that go up because, again, what we have learned, and, Mr.
14 Reilly, I have seen this with my own eyes that we will do
15 something that OPC has requested the Commission to do only
16 the next day to be thrown under the bus for doing it.

17 So, again, the simple solution to remove the
18 Commission and insulate ourselves from this problem
19 completely is to order a one-time refund to customers as
20 of the date of record. And I think that that gets the
21 money back to the people that need the money in these
22 difficult economic times, and we don't have to play around
23 with a rate stabilization fund where we have no control on
24 how those monies are used.

25 And I think that is a very practical

1 straightforward solution. And, again, it's a solution I
2 have tried to discuss with our staff to no avail. And,
3 again, I have seen many times -- I have been on the
4 Commission for two years -- many times, and we are very
5 deferential to requests of the consumers, very deferential
6 to requests from OPC, but at the end of the day I have
7 seen those instances where we have done exactly what has
8 been requested and approved it as a Commission only to be
9 thrown under the bus a day later.

10 So, to me, you know, although you may have
11 equally acceptable options, I'm looking at what the best
12 option is for the Commission, for the consumers, to solve
13 the problem affirmatively, and knowing I don't have
14 jurisdiction, so I can't resolve any dispute that may
15 arise on a forward-going basis between the consumers and
16 FGUA over these monies that we may have approved to go
17 into some fund that we don't control. The simple thing to
18 me to ensure that I get the job done right is to give the
19 money back today to the consumers as of the date of record
20 and then problem solved. It's not a lingering issue.

21 CHAIRMAN CARTER: One second.

22 Mr. Reilly.

23 MR. REILLY: Let me respond.

24 First of all, the Office of Public Counsel is
25 never opposed to refunds. We are 100 percent behind the

1 refunds. If you go and look at the OPC's response to
2 their motion to get the money, we asked -- our prayer for
3 relief was for refunds to the customers. Then, of course,
4 subsequently this other idea came up. And the only reason
5 why we went along with that, and it's still the problem
6 that presents itself, how do you actually implement it.
7 How are you going to get the records and go through there
8 and actually implement it.

9 And if we could work out way to do that,
10 Commissioner, we would support you 100 percent. And let
11 me say just one more thing. If you propose to those who
12 are existing customers who had a right to a refund that we
13 get their pro rata share of that refund, if that is your
14 intent that we could do that, that would be a great idea.

15 Now, for those who have died, and one-third or
16 half of them who have left the territory, would it be your
17 intention to put the balance of that not refunded? What
18 would you do with that money?

19 COMMISSIONER SKOP: What I would do, and I have
20 discussed this extensively with staff, although it did not
21 find it's way into any option available to the Commission,
22 so I'm having to bring it up, and probably catching people
23 by surprise, I'm trying to do something fair. I recognize
24 that people have paid in this. This thing has been more
25 than a decade-long saga. I mean, it's a blemish on the

1 Commission. It's a blemish that it even happened to begin
2 with and it was not affirmatively dealt with.

3 The issue here, notwithstanding all the
4 litigation, is how do we make people whole with the
5 amounts and the refunds due to those customers. I'm
6 looking at that; I have discussed it extensively with
7 staff; I think Mr. Willis would be a great person to step
8 up to the microphone on this; but, basically, you know, I
9 recognize people have passed away, I recognize people have
10 moved away. The simplest way, in my view, because, again,
11 if you put it in a rate stabilization fund that may last
12 for a couple of years from now, that is not going to
13 address the concerns you have raised, so that is the
14 countervailing argument to the one you raised itself.

15 So I think the thing to do is there are
16 customers of record. I know that there is a question of
17 whether Aloha would even give up their thing, but,
18 obviously, FGUA, since the sale is consummated, knows who
19 its customers are. You basically take the amount of a
20 refund that is ordered by this Commission, and you divide
21 it by the number of customers, and you give them a
22 one-time credit by FGUA, and then we don't have to worry
23 about FGUA holding onto the money. But I would like Mr.
24 Willis to speak to that, and then we'll come back to you,
25 Mr. Reilly.

1 MR. WILLIS: Commissioner Skop, I agree that
2 probably the cleanest way to do a refund would be to do it
3 as of a certain record date, whether it be today or the
4 date of the order. If you did that, every customer would
5 get the exact same amount, probably about 29 to \$32,
6 somewhere in there. That would mean that certain
7 customers who didn't pay in would get a refund, customers
8 who paid in more than that would not get all the refund,
9 but we have had instances in the past where that has had
10 to occur, where that has actually been done.

11 COMMISSIONER SKOP: And to that point, the same
12 effect would happen in a rate stabilization. I mean, it
13 would happen the exact same way as you are describing
14 there. There would still be those underlying inequities.

15 So, again, in the interest of fairness, I'm not
16 suggesting anything that's no different from the rate
17 stabilization fund, because the customers that have passed
18 away aren't there, the customers that have moved away
19 aren't there, the customers that paid more may or may not
20 be there. So, again, I see -- you know, you have this
21 pool of money, whatever the Commission sees fit to refund,
22 and you put it into a fund which we have no jurisdiction
23 on, no control over, no -- if a dispute arises, we have no
24 way to arbitrate that dispute. Or you can do the smart
25 prudent thing and keep the Commission out of the

1 cross-fire by ordering it, to the best of our ability, as
2 a refund via a one-time credit to customers as of the date
3 of record.

4 Now, Mr. Reilly --

5 MR. REILLY: May I make an argument in favor of
6 Commissioner Skop's suggestion. Even though there is
7 winners and losers, even though there are people who had
8 high usage that would have been entitled to a higher
9 refund, and people who have come new on the scene who paid
10 none of that interim, one can say that part of this is a
11 fact that all of the people who have been customers all
12 these -- even the five years since these orders were
13 issued back in 2004, have suffered under the black water
14 problem.

15 So you can call it what you want to, but they
16 have -- well, not universally, some customers have had
17 more of a black water problem than others, but you can say
18 as a result of you having this less than high quality
19 service, and because there is this statutory obligation
20 upon the sale of the utility to, quote, refund. Not set
21 up a stabilization fund, but it says, the statute says
22 refund. So the Commission would be on pretty strong
23 ground to say by virtue of that statute, by virtue of the
24 sale we are ordering a refund pursuant to the statute.
25 And the best we can do under the circumstances,

1 particularly under the black water, is we will provide
2 that uniformly to the customers of record at the date of
3 the sale of the utility. And that would be clean.

4 There is winners and losers, but I know that --
5 I don't think the Office of Public Counsel would have any
6 objection to such a solution, and I would defer to you --

7 CHAIRMAN CARTER: One second.

8 After Mr. Forehand, then we'll go to
9 Commissioner Argenziano, and then I'm going to --

10 MR. FOREHAND: I think one of the considerations
11 here that we talked about back when we did the settlement
12 agreement even, why did we leave this escrow account in
13 there to be used. We left it in there because we knew
14 that there was a great cost in trying to distribute this
15 money. I mean, we want to preserve as much of this and
16 get it used instead of spending it on administration fees
17 and this kind of thing trying to get it spread out
18 properly. The customers would be very happy to get as
19 much money of this to help pay off the next thing that has
20 to be done to prevent future or minimize future rate
21 increases.

22 I guess one of my other concerns is that the
23 bank that has been holding this money. I don't know if
24 they are still holding it today. They threatened the
25 customers that they were going to file an interpleader

1 suit.

2 COMMISSIONER SKOP: Mr. Forehand, if we could
3 not -- with all due respect, Mr. Chair, if we could not
4 get into that specific issue. I'm aware of that issue,
5 and that's a separate issue.

6 MR. FOREHAND: Well, this is of concern to the
7 customers, however, and because of this -- I don't know,
8 the money is going to get stuck in some court, and we're
9 going to be without that money for years being tied up in
10 a court unless we make a decision today and move it.

11 COMMISSIONER SKOP: And, again, today those
12 issues will be addressed. That's in the revised staff
13 recommendation about securing the position of that
14 funding. But my concern and, again, to address your
15 concern, I do appreciate your time, sir, for leading the
16 charge and coming forward with innovative ideas. It's
17 just that with my experience, I'm forced to say, you know,
18 given two equally valid options, what is the best option
19 for not only the consumers, but the Commission. And I
20 understand there may be future rate increases, but I also
21 understand that we have no jurisdiction to control how
22 that money is used, whether it is squandered, I don't
23 know. I don't have a hand in doing that.

24 So the easiest thing for me to do is put money
25 back into consumers' pockets today, and they can deal with

1 those rate increases later. And if there is a rate
2 increase issue, they can deal with the FGUA. But, again,
3 so I respect that. We will get to the issue, which is
4 also an issue and concern of mine.

5 MR. FOREHAND: I'll stay away from that.

6 COMMISSIONER ARGENZIANO: Mr. Chair.

7 CHAIRMAN CARTER: Hang on a second, Mr.
8 Forehand. Hang on. Hold up.

9 We're going to Commissioner Argenziano, then
10 Commissioner McMurrian, and then we will come back.

11 Commissioner Argenziano, you're recognized.

12 COMMISSIONER ARGENZIANO: Thank you.

13 I certainly understand what Commissioner Skop is
14 saying, and it would be the best solution to give the
15 people back the money. That was my first inclination.
16 However, what I'm concerned with is what Mr. Forehand has
17 expressed. I mean, these people have gone through a lot
18 for a long time. And to possibly tie things -- we may
19 make a decision today, but it still may tie things up for
20 them. And I think that is the angst I hear coming from
21 Mr. Forehand.

22 And I think it's time we listen to the people.
23 Even though I agree with Commissioner Skop that the best
24 solution is giving people back the money, but if that
25 creates further complications for people who have been --

1 excuse me, but it could. It could. Even though we say
2 today that could be the case. And if you feel so inclined
3 to do that, I would be there with Commissioner Skop.

4 However, I do have some concern that these
5 people would have the problem after -- if we say that
6 today, if there is a problem that it could be hung up for
7 a long time, I'm not willing to do that to them. And I'll
8 defer to Mr. Forehand on whether he would like us to move
9 forward with Commissioner Skop's plan of trying that, or
10 if he feels there is a problem that could occur after we
11 leave here today.

12 So if the people are inclined, and I think Mr.
13 Reilly wants to say something here, so maybe -- okay. If
14 the people are inclined with the decision that they have
15 sent Mr. Forehand with to go ahead and put this into the
16 stabilization fund, then I would be there with him. If he
17 feels -- and I think what I'm asking him is to repeat it.
18 If you feel that even if we made a decision today to do
19 that that somehow it could be a long time or there could
20 be problems in the middle, then I would defer to what you
21 had said about the stabilization fund. Otherwise, if we
22 could actually come to fruition with Commissioner Skop's
23 suggestion of getting the people back their money, and if
24 that could really happen, if staff and Mr. Reilly feel
25 that that could be the solution, then I'm there with

1 Commissioner Skop.

2 **CHAIRMAN CARTER:** Mr. Reilly and then Mr.
3 Forehand. Mr. Forehand and then Mr. Reilly. Let's do it
4 in that order.

5 Mr. Forehand.

6 **MR. REILLY:** The prospects of this being
7 delayed, I mean, is really out of our hands. Whatever
8 decision comes out of today, an order will be issued, and
9 it is subject to appeal by Aloha, whether it is give the
10 money to refunds or whether it is set up the stabilization
11 account. Frankly, if the concern of Mr. Forehand is let's
12 not let this thing drag out any further, the refunds is
13 the cleaner simpler solution, because even if we win and
14 they appeal it being set up for some three -- he says two
15 years, it could be three, four, five years before that
16 escrow account is ever applied to reduce some future rate
17 increase. So this goes on, and it as Commissioner Skop
18 said, it is even outside your control at that point.

19 **COMMISSIONER ARGENZIANO:** Then it begs the
20 question, and I have to ask this question: Why the heck
21 didn't you ask for the refund to begin with?

22 **MR. REILLY:** But I did. And that is what I told
23 you. Office of Public Counsel, if you look at the record
24 --

25 **COMMISSIONER ARGENZIANO:** But what made the

1 change?

2 **MR. REILLY:** Well, because of the practical
3 problem -- we had real problems. In fact, I'm still not
4 sure how we are going to implement it, except if we do
5 implement it not the regular way. I mean, trying to
6 figure out everyone's usages and do the best we can to get
7 the refund to the people who are still customers who had a
8 certain usage. If we go past all of that and make it real
9 clean and down and dirty where everyone gets an equal
10 amount, then I must say that is a pretty fresh idea, and
11 it could be implementable.

12 **COMMISSIONER ARGENZIANO:** Mr. Chair, if I can.
13 So, then, the problem of -- the problematic problem of
14 getting the money dispersed to the people over --

15 **MR. REILLY:** As I'm talking through it in this
16 process, I think it is overcome, because if it's a simple
17 matter of taking the people of record at the time of
18 transfer and call it a black water, you know, whatever
19 payout, or whatever, but pursuant to the statute, because
20 the utility has been sold, we have to refund all interim
21 collections. We are going to implement this --

22 **COMMISSIONER ARGENZIANO:** And, Mr. Chair,
23 reading the statute, that is what it does say.

24 **MR. REILLY:** So we are really --

25 **COMMISSIONER ARGENZIANO:** So if that's a motion,

1 I second the motion, and let's give the people back their
2 money.

3 MR. REILLY: Commissioner Skop has won me over,
4 and I hope I have won Wayne over.

5 CHAIRMAN CARTER: Let's hear from Mr. Forehand.
6 Mr. Forehand, you're recognized, sir. And then we will go
7 to Commissioner McMurrian.

8 MR. FOREHAND: I've got to support what Steve
9 Reilly said and the fact that I believe in refunds, okay.
10 I just wonder if there is another alternative that this
11 could be held in an account for the customers instead.
12 And I wonder if this alternative, let me suggest it, and
13 if you don't like it, Commissioner Skop, I mean, I will be
14 quite open. Could it be between the Better Water Now
15 Committee and the FGUA? Could this become palatable to
16 you?

17 COMMISSIONER SKOP: Again, I think, Mr.
18 Forehand, what I am looking at is -- and I do respect all
19 of your efforts. I'm looking at the best legal solution.
20 Again, this is likely -- our final order is likely to be
21 appealed irrespective of what we do today. But to me the
22 cleanest way, noting I don't have jurisdiction if a future
23 dispute arises between Better Water Now and FGUA, is to do
24 the thing I can do today, and that is order FGUA to give
25 that refund cleanly as a one time credit, a refund to

1 customers of date of record and the problem is solved.

2 It doesn't linger. The monies aren't held for
3 years before they are applied. Consumers in these
4 difficult economic times get their money today, and we are
5 done with it. And so, again, I respect the idea, but the
6 thing is you can take that -- as you mentioned, about
7 money being in -- what it is earning now in the escrow
8 account versus your investments, obviously with consumers
9 and their money in their pocket they can get a better
10 return on that money today on their own and invest it and
11 use that to offset future rate increases later. So I
12 would be more comfortable, with all due respect, sir,
13 giving the money back to the consumers, and I would
14 respect -- hopefully, my colleagues would support that.

15 **MR. WILLIS:** Chairman Carter.

16 **CHAIRMAN CARTER:** Mr. Willis.

17 **MR. WILLIS:** Could I add something here? When
18 you said order FGUA, I don't think we have the statutory
19 ability to order FGUA to do it. We could ask them if they
20 would be willing to do it across the board. What you do
21 have the authority to do is order Aloha to do that.

22 **COMMISSIONER SKOP:** Well, I don't have a lot of
23 confidence that that would get done, but --

24 **MS. BRUBAKER:** May I?

25 **COMMISSIONER ARGENZIANO:** But wouldn't that be

1 the only way we can really do that? I mean, I don't see
2 how we can -- just as if we closed out today --

3 CHAIRMAN CARTER: Hang on. Let's hear from our
4 lawyer.

5 Ms. Brubaker, you're recognized.

6 **MS. BRUBAKER:** Thank you. Jennifer Brubaker for
7 Legal Staff.

8 Just so the record is clarified, we were aware
9 that it would be very useful for FGUA to be present at the
10 agenda today. I just wanted to reassure you, Commissioner
11 Skop, we made repeated requests for them to attend. Mr.
12 Armstrong, their counsel, declined to do so. He was
13 planning to be away all this week, and he did not desire
14 to send someone to address the Commission on the docket.

15 But I do agree with Mr. Willis, I don't think we
16 can order FGUA to do it. In fact, they have expressed a
17 desire not to do a refund. However, we do have
18 jurisdiction over Aloha and can order them to make the
19 refund and we can enforce that in court, if necessary.

20 COMMISSIONER SKOP: Okay: And --

21 **CHAIRMAN CARTER:** Hold on, Commissioner, before
22 you go. Hold on, Commissioners. Just hold the phone.

23 Commissioner McMurrian has been more than
24 patient. We are all going to get a chance to talk, but
25 let's do it in order. Commissioner McMurrian, you're

1 recognized.

2 **COMMISSIONER McMURRIAN:** Maybe not so much if
3 I'm truthful. I'm not sure I was being patient. Anyway,
4 I guess first I want to say that in all these matters, I
5 think that the Commission has been trying to do the right
6 thing. And there have been a lot of matters, as Mr.
7 Forehand and Mr. Reilly knows. And, you know, sometimes
8 we are better able to do what the customers are asking
9 for, and I think this is one of those times. And I guess
10 I'm where Commissioner Argenziano is. I guess as I read
11 the recommendation I had strong feelings about refunds,
12 like Commissioner Skop did, but I felt particularly swayed
13 by what Mr. Forehand and the Better Water Now Committee
14 wanted and thought that perhaps there is some reason that
15 that is cleaner.

16 And I guess it's hard to know, to Mr. Reilly's
17 point, what is cleaner; because, of course, with all of
18 these matters in litigation, if you have Aloha do the
19 refunds, perhaps we end up in some litigation that tries
20 to stop that because they don't want to do the refunds,
21 and so is it cleaner to put it in the account? There
22 still might be litigation on that side. So it's -- I
23 think we are sort of struggling with that. But in some
24 ways it does seem -- I probably could make an argument
25 either way.

1 I am also disappointed that Mr. Armstrong is not
2 here. I will say that to what Commissioner Skop said
3 about that, we can't and the staff can't make anyone show
4 up. I felt like the sentence on Page 15 which was under
5 the rate stabilization escrow account paragraph, it was
6 the last sentence in that first paragraph there, that the
7 FGUA representative stated that while they were not a
8 party, they would accept the transfer of the escrow funds
9 if so ordered by the Commission and commit to use these
10 funds to offset a commensurate amount of revenue which
11 would be recovered through an increase in customer rates.
12 I'm assuming that must have come from the letter that Mr.
13 Jaeger was talking about.

14 So I guess I was swayed by the fact that the
15 customers seem like this was the better approach, and that
16 FGUA had sort of committed to make sure that those funds
17 would be used that way, recognizing as Commissioner Skop
18 does, that we can't make sure they do that. And so I
19 guess my thoughts before we came down here today was to
20 try to make sure that the customers, you know, understood
21 that if that -- if FGUA takes that money in some kind of
22 an account, that we lose our ability to do anything about
23 FGUA if they don't use that money properly.

24 And I have similar concerns on that customer
25 deposit side, too, because of the questions that have come

1 up today. Are we -- is it okay for customers, for those
2 customer deposits to be shifted to FGUA and not just
3 returned to customers like would normally be done in a
4 transfer case. So I guess that is a question I have
5 before we --

6 **MR. WILLIS:** I will be happy to answer those.
7 That is the normal circumstance actually when a utility is
8 transferred to a governmental entity, be it a city,
9 county, or the FGUA. You would normally, in those
10 circumstances, have those customer deposits transferred.

11 **COMMISSIONER McMURRIAN:** You would normally have
12 them transferred with it?

13 **MR. WILLIS:** Yes. It would normally be
14 addressed in the actual transfer itself, the transfer
15 agreement. That is what I have seen in the past. Because
16 the cities and counties charge deposits also, and they are
17 not interested in recharging deposits to customers after
18 they had already had those refunded. So the normal
19 course, to keep that from happening, would be for those
20 deposits to be transferred over.

21 **COMMISSIONER McMURRIAN:** And so as customers
22 might leave the system, if they moved, then they would get
23 their customer deposits that they had initially paid to
24 Aloha refunded by FGUA.

25 **MR. WILLIS:** That's correct.

1 **COMMISSIONER McMURRIAN:** And whatever their
2 policy was about refunding customer deposits.

3 **MR. WILLIS:** Yes. And we could verify that that
4 has actually happened at this point. We'll verify that.
5 If I could, I could just throw a little alternative in
6 here to what Commissioner Skop is talking about. We could
7 probably offer an either/or type of recommendation here.
8 We could order -- we could actually request the FGUA to
9 make the refund, because they may not have considered that
10 a refund would be an across-the-board, one-time, everybody
11 gets the same thing type of refund where they could just
12 do that type of credit on the bill.

13 I don't know that that is what they were
14 envisioning when we asked them if they would be able to do
15 the refund. They probably thought that we wanted them to
16 go back and do all the calculations, and they knew they
17 might not have had that kind of information. We could
18 offer that to them and see if they would do it. In the
19 alternative, you could actually put in an order that if
20 they weren't willing to do that, then you would order
21 Aloha to make the refunds then.

22 So it would be an either/or. First we would go
23 to the FGUA. If they said no, the order would say that
24 Aloha would make the refunds at that point.

25 **COMMISSIONER McMURRIAN:** Mr. Chairman.

1 **CHAIRMAN CARTER:** You're recognized.

2 **COMMISSIONER McMURRIAN:** So you used the term
3 request FGUA because you recognize that we don't have the
4 authority to make them. But if we asked them and
5 suggested that we think that that would be a fair outcome,
6 and that if it was administratively easier to do than
7 maybe what they had envisioned --

8 **MR. WILLIS:** They might.

9 **COMMISSIONER McMURRIAN:** Okay.

10 **MR. WILLIS:** I can't assure it, but at least we
11 would request and try and convince them to do that.

12 **COMMISSIONER McMURRIAN:** Okay. And, Mr.
13 Chairman, I know other people want to talk on this point.
14 I may have some questions. I wanted to go back to some of
15 the points that Mr. Reilly raised before we get ready to
16 vote.

17 **CHAIRMAN CARTER:** We are not close to voting.
18 We are nowhere near close to voting. We are on an
19 iceberg. You may be heard.

20 **MR. WHARTON:** Chairman Carter.

21 **CHAIRMAN CARTER:** You're recognized.

22 **MR. WHARTON:** I could understand a
23 recommendation in the alternative, but if the suggestion
24 is that you issue an order in the alternative? That
25 sounds like a PAA mess. You know what I'm saying? In

1 terms of us deciding whether to protest it, FGUA deciding
2 whether to protest -- so, I certainly understand staff
3 making alternative recommendations, I just wanted to throw
4 that out there. Putting two things in an order, if this
5 doesn't happen, this.

6 **CHAIRMAN CARTER:** Yes, we're not there.
7 Commissioner Argenziano.

8 **COMMISSIONER ARGENZIANO:** I agree that that is
9 just too messy. I think the only thing we have the
10 authority to do -- and just asking somebody to do
11 something that we don't have the authority to do, that's
12 just not right. I think the only thing we have the
13 authority to do is order that the money be refunded to the
14 actual people who paid it. And going beyond that, I mean,
15 if we're just going to request that FGUA do that, they may
16 never do that.

17 And as to Commissioners Skop and McMurrian have
18 already said, once that money -- once it goes, if we
19 haven't ordered that it be given back to the people who
20 paid it, we have no jurisdiction then whatsoever may
21 happen to it. So I don't see any other alternative.

22 **CHAIRMAN CARTER:** I'll be with you in a minute,
23 Commissioner.

24 This case has been here for some time. I don't
25 think it is a blemish on the Commission, though,

1 Commissioner Skop. I do take issue with that, because
2 this company -- we don't run the companies, we regulate
3 the companies. And whether a company decides to follow
4 the rules or not, that's the company, it's not the
5 Commission.

6 And I have read the orders, and none of us were
7 here when this case started. None us were here. And I
8 think that if you look over the last couple of years where
9 we have done -- we have gone by leaps and bounds on this
10 case, on this case for this matter. In the last two years
11 we have made tremendous leaps. We have had -- as you look
12 at the report, you see the show cause, you see that we
13 have gone from a company that was a private company, now
14 it has been bought out by a governmental entity. You have
15 seen how we have engaged the Better Water Now, and the
16 Citizens, and the ratepayers. I do take issue with that,
17 Commissioner.

18 The other thing is that I think that as we look
19 down this road in terms of how do we handle a refund, we
20 do need to try to do it clean, Commissioners, because, you
21 know, we have been down this road before.

22 Commissioner Skop, you're recognized.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

24 Just two points. First, I will go to the
25 comment I made about the Commission and the length.

1 Again, it's not meant to be derogatory, it is just that in
2 recent case law that has been suggested as of the last
3 proceeding by our General Counsel, and also recognized by
4 the Chair, had that controlling case, North Florida
5 Waters, or Cities, I don't have the exact case in front of
6 me, but that case would have provided the legal basis for
7 withholding interim final rates, and probably
8 affirmatively address some of the issues that had lingered
9 in this case. So that is what my comment was is that, you
10 know, had the -- the Commission was -- prior Commissions
11 had moved towards trying to work settlements, and for
12 whatever reason settlements on top of settlements didn't
13 really work. So it is not meant to point fingers, it is
14 just meant that this has been a decade long issue, and
15 it's time to affirmatively draw this issue to a close, and
16 I think that has happened by the transfer to FGUA.

17 The point of jurisdiction, I guess,

18 Mr. Armstrong --

19 **CHAIRMAN CARTER:** Before you go, Commissioner,
20 let's see if there is any further discussion on the
21 refund.

22 **COMMISSIONER SKOP:** I'm going right into that.

23 **CHAIRMAN CARTER:** Let me just see if there are
24 any more comments from any of the other Commissioners, or
25 any questions on the refund issue. But I do think as we

1 go forward on the refund we need to be clean. It needs to
2 be clean. Okay. You're recognized.

3 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

4 The issue with Mr. Armstrong declining to appear
5 before the Commission today, again, it would have been a
6 lot cleaner if he would have been here and subjected
7 himself and given a willing verbal commitment to do what
8 we would have asked because that would have been binding
9 upon FGUA. But, again, that is --

10 **COMMISSIONER ARGENZIANO:** Hang on one second,
11 Commissioner. Let me do something right quick like. I am
12 going to need -- Commissioners, I'm going to need about
13 five minutes to talk to Commission counsel, Ms. Helton,
14 and then we'll come back before you go -- but don't lose
15 your point, because we will start there next.

16 **MR. FOREHAND:** Could I suggest that we make a
17 call to Brian Armstrong right now.

18 **CHAIRMAN CARTER:** That's exactly what I was
19 doing. I was doing it in a very covert way. That's why I
20 said we were going to have Ms. Helton call him. So that
21 is the five minutes. We are on recess.

22 (Recess.)

23 **CHAIRMAN CARTER:** We are back on the record.
24 And when we last left, we took a moment to -- who made the
25 call?

1 Mr. Willis, you're recognized.

2 **MR. WILLIS:** We have had a discussion during the
3 recess with Brian Armstrong of the Florida Governmental
4 Utility Authority. He has informed us that FGUA will not
5 be willing to make any refunds. The only way they will be
6 willing to do anything is to take it exactly the way it
7 was presented to the Commission as a rate stabilization
8 fund.

9 **CHAIRMAN CARTER:** Okay.

10 Commissioner Skop, you're recognized.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

12 I guess, in light of that -- and, again, it is
13 disappointing that Mr. Armstrong declined to appear before
14 the Commission today. I know he is not subject to our
15 jurisdiction, but that just further accentuates my
16 argument about trying to administer something that we have
17 no jurisdiction over to begin with on a forward-going
18 basis. But in light of his rationale, did he provide any
19 specific rationale to why he would not be amenable to
20 that? And, also --

21 **MR. WILLIS:** Mr. Armstrong -- and if any other
22 party wants to correct me on this -- but his reasoning to
23 us was basically that he did not want to subject the
24 Florida Governmental Utility Authority to any lawsuits
25 that might arise from one customer coming to the FGUA and

1 claiming that they were due more of a refund.

2 **COMMISSIONER SKOP:** Under the rate stabilization
3 problem, though, wouldn't the same possibility exist?

4 **MR. WILLIS:** To me the same possibility can
5 exist there, that a customer can file a lawsuit saying
6 that they would be due a refund, if it weren't for putting
7 it in the rate stabilization fund.

8 **COMMISSIONER SKOP:** So our only option, then,
9 would be, in lieu of FGUA not stepping up to the plate,
10 would be to use the Commission's power to order Aloha to
11 do a refund should the Commission choose to do that.

12 **MR. WILLIS:** That is correct. The only
13 option -- I would point out that Brian Armstrong did
14 indicate that he would be willing to sign off on that rate
15 stabilization fund escrow account with the Better Water
16 Now Committee. He would be willing to co-sign with them.

17 **COMMISSIONER SKOP:** Commissioners, I'm not
18 comfortable with that, given the lack of jurisdiction on a
19 forward-going basis. I fully support a refund, but FGUA
20 just not appearing here today and not trying to be a part
21 of the solution, I respect their position, but their
22 position to me is inconsistent because the same problems
23 would arise under the creation of a rate stabilization
24 fund under which this Commission has no jurisdiction over.

25 So, I just -- I guess I would get into, you

1 know, the issue of what -- how should the refund, the
2 disposition of the refund, and then I think the remaining
3 questions I have are what is the proper refund amount.
4 And then I would like to also speak on Issue 6 to a
5 comment that Mr. Wharton made. And also, it's my
6 understanding that the monies in question were swept out
7 of the bank account. And to me, at least, that begs the
8 question as to whether a show cause proceeding would also
9 be appropriate to the extent that any violation of a valid
10 Commission order would be a fine up to \$5,000 per day.
11 And those funds were out of the account, unilaterally out
12 of the account for 11 days, so that is \$55,000 in play.

13 So, again, I know that staff has recommended
14 that the amount of \$74,239 of the escrow fund be released
15 to Aloha, and I think there is an administrative finality
16 argument that we need to talk about, but my primary
17 concern is trying to resolve how the Commission will deal
18 with the disposition of any refund, and I'm fully in
19 support of ordering a refund to the consumers.

20 **CHAIRMAN CARTER:** Thank you.

21 Commissioners, let me just go to Mr. Forehand
22 for one second before we go forward. He has been asking
23 for an opportunity.

24 Mr. Forehand, you're recognized.

25 **MR. FOREHAND:** After everybody else got off the

1 phone with Brian, we did reach him on my cell phone.
2 Brian is very good and takes my phone calls no matter
3 what. What I've got to say is that I chatted with Brian,
4 and I said, "Brian, I hear you, you don't want to get
5 involved in this thing." I said, "Would you consider a
6 signatory from the Better Water Now holding the other half
7 of this thing?"

8 And I think, you know, and I see Commissioner
9 Skop doesn't like that, and I understand, but on the other
10 hand, it looks like a very good alternative. It would be
11 very palatable to the customers. I'd like to see a little
12 consideration for this. You know, I would like to sit
13 here and defer and say, "Hey, yes, have FGUA do it." But
14 obviously, they are not going to, they don't want to on
15 that situation.

16 CHAIRMAN CARTER: Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** Well, help me out
18 here. The issue is getting the refund back to the
19 customers, or to the fund, or a fund where the group holds
20 maybe some name to it, I guess. If we can't order FGUA,
21 and we can't. I mean, there is no reason to even discuss
22 that at this point, so why don't we just get rid of that
23 option and discuss now what the options are.

24 And, if Mr. Forehand -- I think now -- I think,
25 let me see if I got your position right, because you were

1 sent here by the people who have been going through this
2 for a long time. Do you still think the refund directly
3 back to the customers is the way to go?

4 **MR. FOREHAND:** Not really. I think this fund
5 that we have talked about all along is the way, and I
6 think we need to figure out some way to make that
7 palatable to the Commissioners that we can put it in such
8 a fund.

9 **COMMISSIONER ARGENZIANO:** Can I ask a second
10 part to that, Mr. Forehand? You do then understand that
11 once it goes -- if we don't -- if we don't decide today
12 that it should be refunded back to the customers, that we
13 have no jurisdiction afterwards, then.

14 **MR. FOREHAND:** I understand that, and what we
15 have developed is so much -- the customers have developed
16 so much trust working with this FGUA that we feel very
17 comfortable. They have a board of directors, and we have
18 direct access to that board of directors. Our county has
19 a representative, the assistant administrator, that sits
20 on that that works with us very closely, also.

21 **COMMISSIONER ARGENZIANO:** You know, Mr.
22 Forehand, I hope that that continues, I really do.
23 Because it's really nice to have that after, you know, the
24 turmoil for whatever the reasons were with the company,
25 and whatever, it is nice to see that happen. So, you

1 know, I'd like to talk to Commissioner Skop about that. I
2 agree with his mechanism in getting the refunds back, but
3 I'm certainly not going to be the one to tell the people
4 that, no, your way is not the right way. If that is what
5 you have chosen, then I would be happy to go along with
6 that, knowing that you understand that if things go sour,
7 we have no jurisdiction.

8 **MR. WHARTON:** Chairman Carter, if I may briefly.

9 **CHAIRMAN CARTER:** Briefly, and then I'll go to
10 Commissioner McMurrian.

11 **MR. WHARTON:** We have said nothing during the
12 last 45-minute discussion and that is what my comments go
13 to.

14 **CHAIRMAN CARTER:** You may be heard.

15 **MR. WHARTON:** Thank you.

16 I want the Commission, and I don't presume to
17 induce an epiphany on the part of any of the Commissioners
18 by saying this, I just don't want -- I guess I want to be
19 clear for the record and to make sure no one says later,
20 well, you never said that, is that we are not -- we're not
21 participating in this discussion that I would liken to how
22 many volts to apply, because we do not accept the entire
23 premise. We do not accept the premise that these are
24 interim rate monies. Let's face it, there is no Plan B in
25 this agreement in this order, but there is a line in it

1 that says the net refund plus interest shall be used,
2 shall be used to help pay for Anion exchange.

3 And when you are now fashioning a remedy, I just
4 think -- let's put it this way, I was at that table. And
5 if you would have told us at the time, oh, by the way, if
6 anything happens such that Phase III rates never go final,
7 whether it's the end of the world, you are sold or
8 whatever, these things revert to interim rates and you
9 don't get them. We would have said, well, we are not
10 going to dismiss that appeal. There was a pending appeal
11 of these exact monies. I just wanted to make sure
12 everybody understood that is why we haven't participated
13 in this discussion.

14 **COMMISSIONER ARGENZIANO:** Sure.

15 **CHAIRMAN CARTER:** Commissioner Argenziano.

16 **COMMISSIONER ARGENZIANO:** And, Mr. Chairman, I
17 understand that, but what do you say to the statute that
18 says that, you know, that interim rate relief must be
19 refunded to the customers of the utility with interest?

20 **MR. WHARTON:** That if these are interim rates
21 they would fall under the statute, but that they are --
22 your order changed the character of them. Your March of
23 2006 order changed the character of those monies such that
24 they were earmarked for Anion expenses. That's our
25 position.

1 **COMMISSIONER ARGENZIANO:** And can I hear from
2 OPC?

3 **MR. REILLY:** We have not responded to this
4 point, and I guess this is the appropriate time to do so.

5 **CHAIRMAN CARTER:** You're recognized.

6 **MR. REILLY:** Counsel for Aloha has stated that
7 shareholders taking all of this money is both in the
8 spirit and the intent of the settlement agreement and the
9 order that approved it, and we respectfully argue that is
10 completely untrue. OPC was a signator on the agreement on
11 behalf of all the customers, and that we did so with the
12 understanding that the customers would receive full
13 benefit of the escrow account.

14 Aloha was not to receive any money until it
15 completely finished construction of all improvements
16 necessary to finally solve the black water problem and
17 completed one entire year of operations of those
18 facilities. Only after this year of operation of the
19 Anion exchange facilities was the money to be released,
20 and only then, and only then would all of the monies be
21 recorded as full CIAC, fully benefiting the customers and
22 offsetting CIAC. So the customers were to receive every
23 penny of benefit in the form of CIAC as opposed to cash
24 money in their pockets.

25 Now, Aloha has neither built nor operated the

1 facilities, nor if Aloha's shareholders receive the funds
2 will any of the dollars be treated as CIAC or provide any
3 benefit to the customers. To allow these shareholders to
4 walk away with this money on top of the \$90.5 million
5 absolutely is not either in the spirit or the letter of
6 the settlement agreement and the order to which it
7 approved. So we are very prepared to argue wherever you
8 need to argue that his reliance on that settlement
9 agreement, and his reliance on your Commission order
10 approving in no way allows these shareholders to do
11 something that is completely violative of the spirit and
12 the letter of the settlement agreement and the order to
13 which it approved.

14 So if he wants to put his hope on that one as a
15 signatory to that agreement, that was not the meeting of
16 the minds whatsoever. Thank you.

17 **CHAIRMAN CARTER:** Thank you.

18 Commissioner McMurrin, you're recognized.

19 **COMMISSIONER McMURRIAN:** Thank you.

20 And actually I was going to make a different
21 point, but on that point that we were just talking about,
22 I mean, it might have been earmarked for Anion exchange,
23 but in my mind we earmarked it for addressing the problems
24 with the water. And so I do agree with what Mr. Reilly is
25 saying is that somehow setting it aside for perhaps FGUA

1 to use to address those problems and offset some of the
2 costs to the customers, I think it is consistent with the
3 spirit and intent of the order. But, anyway, that's my
4 two cents on that.

5 I wanted to ask our legal staff about this issue
6 with FGUA and what they have told us in the letter that
7 Mr. Jaeger mentioned. And I think that that is probably
8 the basis of the sentence that I mentioned before on Page
9 15, because, you know, I have -- we've already talked
10 about these concerns, but I still believe that perhaps,
11 you know, the customers are coming in telling us they
12 think this is the best way. While it may be cleaner in a
13 sense to do refunds, either way is not going to be
14 perfectly clean because there will probably be litigation
15 in some sense. But perhaps knowing that Aloha doesn't
16 want to do refunds and doesn't feel like they could be
17 ordered to do that, FGUA doesn't actually want to do the
18 refunds, but FGUA would be willing, at least according to
19 this sentence, to take on this rate stabilization account
20 and commit to use these funds to offset a commensurate
21 amount of revenue which would be recovered through an
22 increase in customer rates. It seems to me that that is
23 the best idea, because we have a willing -- it seems, and
24 I want to check with legal staff, can FGUA be held not by
25 us, but by a court to the statements they have made to us

1 in this letter? In other words, do we believe that their
2 statements that we have reflected in the rec, but also
3 that we have in this letter could be used to make sure
4 that FGUA sort of carries out that promise that they will
5 commit to use these monies for this group of customers and
6 not other FGUA customers?

7 **MS. BRUBAKER:** Of course, I can't -- as we have
8 talked at some length, we don't have direct authority over
9 FGUA. I will say, just personally speaking if I were a
10 customer and it was my understanding not only through this
11 letter, but if it were the will of the Commission to
12 approve what has been committed to in this letter, and I
13 had both this letter, I had the verbal representations of
14 Mr. Armstrong that have been expressed here, granted
15 through other parties, but I think we have all heard
16 consistently the same information, and, furthermore, I had
17 an order of the Commission memorializing what had been
18 committed to, if I were a customer who felt that FGUA was
19 not fulfilling those commitments, I would certainly, I
20 think, feel that I could avail myself to the courts to
21 have that enforced. I couldn't speak to what the outcome,
22 of course, would be.

23 **COMMISSIONER McMURRIAN:** Right.

24 **MS. BRUBAKER:** But if I felt that way --

25 (Simultaneous conversation.)

1 **COMMISSIONER McMURRIAN:** But a case could be
2 made, a legitimate case could be made that those
3 representations had been relied on by people that would be
4 affected, and that they could take that to a court and
5 perhaps make a case that we were under the understanding
6 that FGUA was going to do what they said here in this
7 case.

8 **MS. BRUBAKER:** I would certainly expect so, but
9 I certainly wouldn't want to mislead the Commission that I
10 have any real sense of what the chance of success at that
11 court would be.

12 **COMMISSIONER McMURRIAN:** Thank you.

13 **CHAIRMAN CARTER:** Commissioner Argenziano.

14 **COMMISSIONER ARGENZIANO:** I think even the
15 discussion of that, to be honest with you, would scare
16 FGUA to death. I'm serious. Because here they are, they
17 are taking over this system and they have a good
18 relationship with the people that are there, and now we
19 are talking about can we hold them to what they say. That
20 is -- I think we've got -- we don't have any jurisdiction
21 over FGUA. And if the people at some point feel that FGUA
22 didn't live up to their end of the bargain, that's their
23 remedy.

24 But I want to make it clear that we don't have
25 jurisdiction over FGUA, and I don't want to spoil

1 something that may be occurring between the people of the
2 facilities and FGUA right now. So I don't want -- I know
3 the question was a good question, but I think if I were
4 FGUA, I would be going, what the heck did we get ourself
5 into here, you know. And I just want to make sure that,
6 you know, they understand, we don't have jurisdiction over
7 them. And I feel comfortable with Mr. Forehand in his
8 deliberations with them, that they are in a comfortable
9 place.

10 **MR. FOREHAND:** I would like to add that one
11 thing the FGUA does have, it has a board that sits like
12 you do, there is a representative from each county, they
13 meet monthly. We have been before them. If we are not
14 getting from them, we have the county commissioners who
15 have a representative on that board to go to. We have a
16 lot of recourse now. In the past, we had to come up here
17 to Tallahassee when we couldn't get what was proper from
18 the utility. And now we have local jurisdiction. And I
19 have trouble seeing the time we would even need to go to
20 the court with this new system that is so effective.

21 **CHAIRMAN CARTER:** One second. Let me just give
22 this before I lose it, which won't be the first time.

23 But, Commissioner Argenziano, I think that you
24 asked the key question that needed to be asked, and that
25 is to Mr. Forehand as to whether or not they were

1 comfortable with this. Because we really -- I mean, the
2 refund would go to the ratepayers. And if the ratepayers
3 feel strongly that this is the way they want to go, then I
4 think that -- I mean, I'm persuaded equally if that is the
5 way they want to go, knowing full well that we won't have
6 jurisdiction or anything like that. So you're going in it
7 with your eyes open and knowing that sort of -- I mean, as
8 a Commissioner, and I think we all try to do this, is that
9 whenever we have an opportunity with the discretion to do
10 something and we have the support of the ratepayers to say
11 we want to do this, and it's within our purview to do
12 that, then I say we should do that. And so that is kind
13 of -- I wanted to get that thought out there before we
14 moved on to another issue. Because I'm persuaded by that.
15 Because Mr. Forehand said this works for them, it is their
16 money. And that is my statement, I said it is their
17 money. It's not anybody else's.

18 **MS. BRUBAKER:** Mr. Chairman.

19 **CHAIRMAN CARTER:** Yes, ma'am.

20 **MS. BRUBAKER:** And this is not an argument for
21 or against any of the particular options, but I would just
22 like to clarify that --

23 **CHAIRMAN CARTER:** Yes, ma'am.

24 **MS. BRUBAKER:** -- in a subsequent conversation
25 just a few minutes ago that Mr. Forehand had with Mr.

1 Armstrong, Mr. Armstrong did agree, if I understand
2 correctly, to have Mr. Forehand's committee be a co-signer
3 on that. And that may help, to some extent, mitigate
4 concerns that this account could be used in some way that
5 is not consistent with our understanding here today.

6 **CHAIRMAN CARTER:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 I still have the same underlying concerns. And,
9 just for the record, concerns are founded on years of
10 corporate experience and seeing litigation and things go
11 wrong.

12 My concern, again, as previously pointed out,
13 and I guess Mr. Forehand accepts that concern and has a
14 very sanguine view of FGUA's board of directors, but,
15 again, I think previously some concerns have been
16 addressed on that quasi-governmental entity.

17 My concern is this: If we accept Better Water
18 Now's proposal, which I am not in favor of, full fund of a
19 refund, I want it clear for the record, I want to give the
20 money back to the consumers. They deserve it, okay? The
21 amount of return is still up in the air, but I want to
22 give the money back directly so I don't have to deal with
23 headaches later, which I don't -- because I don't have
24 jurisdiction. But I want to make sure it gets back to the
25 intended beneficiary.

1 The problem with doing the fund is you have
2 intergenerational inequity arguments, you have the fact
3 that the fund may be a fund for years to come and not
4 applied to use. I don't have the ability to require FGUA
5 to post a performance bond. I don't have prudence
6 jurisdiction over the amounts that could be expended. For
7 all I know they could use that money for a company picnic.
8 I have no ability to control that, and I doubt that you
9 have the transparency to show that that money wasn't
10 prudently used.

11 So, again, just as long as Commissioner
12 Argenziano had pointed out and you are fully aware to
13 accept that responsibility, you know, I'm just trying to
14 be -- put a protective measure on there to make sure the
15 money gets back in the hands of the consumer where I know
16 it's safe, where I know that these problems won't arise.

17 And if somebody wants to flay me and crucify me
18 for that, that's fine, but I'm just trying to do the right
19 thing. And that is sincere at heart, it is the most
20 practical, in my view, approach. I know that, obviously,
21 the consumers want something else; but, you know, the old
22 additive, careful what you wish for, because, again, you
23 know, we have no jurisdiction. We can't be there to help
24 you, and you can't run to us to say, oh, they are not
25 doing what you ordered them to do. It's hands off.

1 So, again, there is no ability to require a
2 performance bond, there is no prudency jurisdiction, and,
3 you know, they could have a keg party. So, again, I'm not
4 saying that they would or suggesting they would, but I
5 can't control how that money is spent. They could tell
6 you it's spent one way, we don't have audit power, we
7 don't have prudency review. We are giving up a lot. To
8 me the safer play is give the money back to the consumer.

9 I don't know whether we could order Aloha to do
10 that, I don't know even if the Commission could take the
11 extraordinary step. I know it is not really something we
12 would do, but, you know, if the Commission could do the
13 refunds, maybe we have to undertake that to get the right
14 thing done. But if the majority wants to give -- to
15 accept the request of Better Water Now, that's fine. I
16 will respectfully dissent on the issue of doing it that
17 way, but I'm in full support of the refund that we
18 discussed.

19 **MR. FOREHAND:** Commissioner Skop.

20 **CHAIRMAN CARTER:** Mr. Forehand.

21 **MR. FOREHAND:** I'm sorry.

22 Yes. I actually respect your opinion here,
23 Commissioner Skop. I hear what you are saying. I think
24 where we are, though, is we know that Aloha doesn't want
25 to do it, they will refuse to do it. We know that FGUA

1 doesn't want to get involved in making a refund. The only
2 way the refund could be made is if the PSC takes that on.

3 The other option is to go ahead, and I hope that
4 I have clearly explained that with FGUA we do have a very
5 good recourse. You know, we do have a board that sits
6 like you made up of an administrator from each county, we
7 have a county commission that we can go to if we are not
8 getting satisfaction. I mean, we have recourse locally
9 without coming to Tallahassee.

10 And, then, if something didn't work -- I mean, I
11 think things will work out. We like having the local
12 control, and that's what we would like to see. The only
13 other option you have got is if the PSC will take it on,
14 it sounds like, and make the refund, and that will be
15 something the PSC will have to decide on.

16 **CHAIRMAN CARTER:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Mr. Chair. The
18 way I see it is the Commission probably has three options.
19 We can order Aloha to do the refund. I don't think they
20 have a choice. It is a valid Commission order. They can
21 protest, they can litigate. That is business as usual.
22 Fine.

23 You know, the PSC, I don't know if it is an
24 option, we could take that responsibility on. Or we could
25 do the Better Water Now proposal. I just am equally

1 concerned, and, again, the litigation issue had been
2 previously brought up; but, again, if you are making
3 representations on Better Water Now, and you have an
4 aggrieved customer that doesn't share your view by virtue
5 of something that happens in the future, I think there is
6 potential legal liability for Better Water Now.

7 So, again, that is not my responsibility. I
8 don't have to advise you of legal rights and obligations,
9 but, again, that is an ancillary concern that I have.
10 And, again, getting the money in the hands of the
11 consumers, the owners of the money is to me the right
12 thing and the more prudent thing to do because that's my
13 only opportunity to wrong a perceived issue.

14 And I'm trying to exercise jurisdiction and
15 exercise that jurisdiction wisely while I have the ability
16 to do so. And I fully respect your proposal, it is a very
17 innovative one, but, again, this has been a decade-plus
18 long saga, and I'm trying to bring some closure to it and
19 do the best I can.

20 **CHAIRMAN CARTER:** Commissioner Argenziano.

21 **COMMISSIONER ARGENZIANO:** I think we have beat
22 this to death, and we are just repeating the same things
23 over and over again. I think at this point, and as I said
24 before, I understand Commissioner Skop's, to me that is
25 the way to go, but with the full understanding that the

1 people really want things at the local level, and I
2 understand their reasons for that, I am not going to tell
3 the people that I'm not going to give them what they are
4 asking for, not after the trial and tribulations of
5 getting to this point.

6 So I just -- respectfully, just will agree that
7 that is where we need to go. Let's give it to the people
8 to put in the stabilization fund and let's move on to the
9 next subject of how much, because that is another battle
10 right here of, you know, how much really goes back to the
11 people. And I think we should start that debate now.
12 And, staff, I'd like to ask staff what is the
13 justification for your recommendation of giving back
14 \$74,000 to Aloha?

15 **CHAIRMAN CARTER:** Ms. Brubaker, did you have a
16 point before we move on?

17 **MS. BRUBAKER:** Thank you, Mr. Chairman. I am
18 sorry to -- for just a moment. When Commissioner Skop was
19 making his comments, I was reminded by my fellow
20 counselors that there are two points I probably should
21 make clear for the point of the order, and it has to do
22 with the Better Water Now Committee being a co-signer.
23 One is that Better Water Now is not currently a legal
24 entity and would need to become so. Further, it is not my
25 understanding at this time that Better Water Now speaks

1 for all concerned customers, so I just want to make sure
2 that those are in the record.

3 **CHAIRMAN CARTER:** Okay.

4 You may proceed, Staff, with Commissioner
5 Argenziano's question.

6 **MR. FLETCHER:** Commissioner, the interim rate
7 period was about 19 months is when -- it started January
8 2002, and then completed on July 30th of 2003. The first
9 four months is what we considered the rate case period.
10 That was the date when they began collecting -- Aloha
11 began collecting the interim rates until the first final
12 order was issued in April 30th of 2002.

13 The Commission in that first final order had set
14 out a refund methodology pursuant to the statute that 4.87
15 percent shall be refunded back to the customers over the
16 entire 19-month period. Now, that order was protested,
17 and that went to the First DCA, and later that was per
18 curiam affirmed by the First DCA that 4.87 is the refund
19 percentage.

20 Now, later there was a PAA order that was issued
21 in February of 2004 that addressed the rate case period,
22 the first four months, and then the remaining 15 months of
23 the interim collection period. What the Commission had
24 decided is that the 4.87 for the first four months is the
25 correct percentage for the rate case period. The first

1 four months, and that that was per curiam affirmed by the
2 First DCA.

3 In that PAA order also the Commission decided
4 for the final 15 months, which is the appeals period, is
5 that the utility should not benefit for appealing the
6 Commission's decision, because in that first final order
7 they granted no increase, and because they filed an appeal
8 and asked for a motion for stay over that 15 months in
9 that PAA order, the Commission decided that they should
10 not benefit at all. No increase. The entire
11 15.95 percent should go back to the customers for that
12 15-month appeal period.

13 And that is the basis of the staff's
14 recommendation for the rate case period first four months
15 is that it was per curiam affirmed and there's
16 administrative finality associated with that, and I would
17 have to defer to Legal regarding that administrative
18 finality argument.

19 **CHAIRMAN CARTER:** Ms. Brubaker or Mr. Jaeger.
20 Who's on first? Legal.

21 **MS. BRUBAKER:** I'll take a stab at it --

22 **CHAIRMAN CARTER:** Go for it.

23 **MS. BRUBAKER:** -- and I'll leave it to Mr.
24 Jaeger to round out anything that I may have left.

25 Administrative finality is a concept that comes

1 before this Commission from time to time, and the idea is
2 that there needs to be some finality to the administrative
3 process at some point. And one of the things that's
4 looked at is was there a matter of fraud or deceit. You
5 can also look at whether there is a compelling matter of
6 public interest that would require the Commission to go
7 back and recede from its prior ruling.

8 One of the things that the courts would look at
9 in determining whether administrative finality is properly
10 returned or not is how much time has passed since the
11 order. And I would note that the order that is at issue
12 here -- was it 2002?

13 **MR. JAEGER:** April 30th, 2002. That was the
14 finality order after hearing, and that was the order that
15 was per curiam affirmed one year later.

16 **CHAIRMAN CARTER:** I'm going to go to
17 Commissioner McMurrian first.

18 After Commissioner Argenziano, Commissioner
19 McMurrian, and then I will come to you, Commissioner.

20 **COMMISSIONER ARGENZIANO:** A follow-up.

21 **CHAIRMAN CARTER:** You're recognized.

22 **COMMISSIONER ARGENZIANO:** And I guess I'm going
23 to say this the best way I can. With no legal
24 mumbo-jumbo, can I just get an answer as to why the
25 company is due back the \$74,000? What order, what was

1 determined in the order that they are due \$74,000?

2 **MR. JAEGER:** During the interim rate period, the
3 Commission found that only 4.87 percent of the 15.9 -- the
4 4.87 percent represented \$31,000 approximately, and then
5 the remaining 11.8 represented --

6 **COMMISSIONER ARGENZIANO:** But what does that
7 mean? Are you telling me that the company spent money? I
8 mean, give me something substantial.

9 **MR. JAEGER:** They collected \$105,000 in that
10 four-month period. It was interim rates. And the
11 Commission said refund 31,000 of that 105. They said you
12 are entitled to the remaining amount.

13 **COMMISSIONER ARGENZIANO:** But that's what I'm
14 trying to get to. What entitles them to the remaining
15 amount?

16 **MR. JAEGER:** That was in the final order. And
17 what caused it, Marshall can tell you how interim rates
18 are collected, but basically they had three months of
19 purchased water in that interim rate period in the interim
20 test year, and you look at the revenue requirement for the
21 interim test year just like you do the revenue requirement
22 for the different period for the final rates, and so --

23 **COMMISSIONER ARGENZIANO:** So they spent money on
24 water. I've got to extract this. Excuse me. Can the
25 company answer this better?

1 **MR. WHARTON:** I think I can put it down some.

2 **COMMISSIONER ARGENZIANO:** Okay.

3 **MR. WHARTON:** I don't think anyone is saying
4 that based on whatever the vagaries were of that decision
5 those many years ago, the Commission made the wrong
6 decision. There was an issue about refunds. You said
7 that we should get back most of them, and we protested the
8 part that you said we shouldn't get back. No one
9 protested that other part. And under the Administrative
10 Procedure Act that becomes final.

11 Now these many years later, and I won't quibble
12 about this characterization in the staff rec that we never
13 requested it, whether we should have requested it or
14 whether the Commission should have written and said, here,
15 you can now take it out of escrow. Now these many years
16 later, even OPC is saying staff's case is persuasive on
17 the facts and what happened, but everything got reopened
18 on the sale.

19 But based on all the vagaries of ratemaking all
20 of those many years ago, you guys issued a Proposed Agency
21 Action that customers, OPC, Aloha, all could have
22 protested. We protested the part we didn't like. This is
23 the part that nobody protested.

24 **COMMISSIONER ARGENZIANO:** Because I wasn't here
25 all that many years ago. Can OPC address that now,

1 because what I'm trying to find out is what the Commission
2 decided at that time that the company was due back. And
3 it sounds like nobody protested what that was. And now to
4 ask for it back after all of these years -- and I'm trying
5 it give the customers what they deserve, but I've got to
6 have some kind of an answer.

7 **MR. REILLY:** I can't tell you whether the staff
8 recommended correctly and the Commission voted correctly
9 on that amount.

10 **COMMISSIONER ARGENZIANO:** That's not what I'm
11 asking. I don't know whether I'm asking you to decide
12 whether they voted correctly, I'm trying to say somebody
13 remember the particulars. I heard, well, the company
14 bought the water, the company spent money here. I mean,
15 it is as simple as that. You don't have to go to law
16 school to try to figure that one out.

17 **MR. REILLY:** I was not involved in the case at
18 that time. I have read, reread, and reread the orders in
19 question. There is even, to me, inconsistent language.
20 In one place the order says they purchased three months of
21 water, in the next place they say they didn't. So there
22 is even -- I honestly cannot make sense of the order, but
23 the bottom line is those orders were out there. Under
24 administrative finality they did prescribe the method,
25 right or wrong, about how that was going to be calculated

1 for those four months of the rate case period. And I'm
2 saying that an argument can be made, staff is making the
3 argument today because of administrative finality it is
4 out there, it is closed, you can't look at that.

5 And I use the argument in the alternative of
6 that, that is true, but for the fact that if there is no
7 method to be done, if there is no method to calculate, and
8 they are still interim revenues and that is still open
9 because of all of these appeals of this utility, that
10 statute trumps it. I mean, that is the argument that I
11 have made today is the argument says if there are interim
12 revenues that have not been refunded and this company
13 decides subsequently, an intervening event, five years
14 down the road we are going to sell this utility, because
15 these monies have been held subject to refund and
16 protected, and now they have sold it, that statute says
17 all interim collections shall be refunded to customers.

18 So I'm not setting aside the finality of that
19 decision, I would argue to you that we are not looking for
20 those orders to see how we are going to be calculating the
21 refund under those four months, we go past that. A sale
22 has taken place, therefore, there is no method to apply at
23 all, and we go straight to the statute and say all of the
24 interim revenues that have not been refunded pursuant to
25 the statute must be refunded to the customers under the

1 statute. So it trumps it. I mean, that's the argument
2 that I'm making.

3 **CHAIRMAN CARTER:** Hang on one second now.
4 Here's the plan. Before everybody starts to spiral out of
5 control, here is the plan, is that Commissioner
6 McMurrin -- I'll go to Commissioner McMurrin, and then I
7 will come back.

8 But when I come back, staff, I want you to be
9 able to answer Commissioner Argenziano's question in terms
10 of what exactly were the funds expended for. It's real
11 simple.

12 **MR. WHARTON:** And that is what I was going to
13 try to do by pointing at the --

14 **CHAIRMAN CARTER:** Okay. We will come back to
15 that.

16 Commissioner McMurrin, you're recognized.

17 **COMMISSIONER McMURRIAN:** Thank you. I want to
18 give a try. I didn't go to law school, either, and so I
19 don't -- I really don't want to talk about administrative
20 finality, so I want to ask a question that I hope gets to
21 it.

22 As I read the rec and went back through what
23 happened, it seemed to me that the 74,239 that we were
24 talking about was required for the company to earn up to
25 the minimum ROE for that interim period. In other words,

1 we had -- so, maybe I'm wrong, but it seems like the
2 statute says that for an interim period, and we were in
3 the middle of this rate case, that they have to earn up to
4 the minimum of the ROE. And that's why we have this
5 74,000 hanging out there, because we thought the
6 4.87 percent, that other 30,000 needed to go back to the
7 customers because it was beyond that.

8 Marshall is smiling, so I'm thinking there is
9 more to this story. But am I misunderstanding?

10 MR. WILLIS: You're close. The interim statute
11 says that you set interim rates based on the low end of
12 the range of reasonableness. But when you look at
13 refunding interim rates, you bring them to the new rate of
14 return established by the Commission, which was the
15 midpoint.

16 COMMISSIONER McMURRIAN: So that's still where
17 that 74,000 originated from, because that would bring them
18 back to the midpoint.

19 MR. WILLIS: Yes. And if I can explain exactly
20 how that came about.

21 CHAIRMAN CARTER: Okay.

22 MR. WILLIS: When the rate case was filed with
23 the Commission, the company started to purchase water from
24 Pasco County, which was pretty expensive. It's very
25 expensive to purchase water. That is what a lot of that

1 case resolved around was starting to purchase water from
2 Pasco County.

3 The company ended up purchasing about three
4 months worth of water from Pasco County, which raised
5 their expenses rather drastically for that interim period.
6 When the case was resolved, the Commission said we don't
7 see a difference between you purchasing water from Pasco
8 County wellfields versus your own wellfields. We see no
9 difference there whatsoever, so we are not going to allow
10 you to purchase water at this point. We are not going to
11 allow the expense of you purchasing water going forward.
12 Because of that, there was a zero rate increase at that
13 point.

14 But for the time the rate case was going on, the
15 company actually incurred the cost of purchasing water.
16 That's where the 74,000-some-odd-dollars comes from.
17 During that rate case period, they incurred higher costs
18 than they did after the rate case, because after the rate
19 case the purchased water went away.

20 **COMMISSIONER McMURRIAN:** So do you think that
21 given those circumstances at the time that the statute
22 requires us to make sure they were earning up to that,
23 whatever that point was, that they were earning up to that
24 point for that interim period. And so even though we
25 hadn't refunded the money because a lot of things that

1 ensued after -- I mean, not refunded. We hadn't released
2 that back to Aloha because of a lot of things that ensued
3 after, and the settlement agreement, we held those funds
4 longer. I mean, if none of that would have happened,
5 wouldn't we have probably already released that 74,000 to
6 Aloha before --

7 **MR. WILLIS:** Yes, Commissioner.

8 **COMMISSIONER McMURRIAN:** And I hear Mr. Reilly's
9 concerns. And I think I'm with you on everything else,
10 Mr. Reilly, but it seems to me that this is money that
11 should be released to Aloha.

12 **MR. WILLIS:** Commissioner, we would have
13 released the 74,000 back then if none of the court
14 proceedings had continued and none of this had gone to
15 court. That would have been released. The way the
16 interim statute works is you basically have to develop a
17 separate test year for the time that the interim rates
18 were in place, and you have to basically view that
19 separately from -- the final test year uses the final
20 rates. We have to look at the costs for the interim test
21 year, that time when rates were in place under interim
22 rates. We have to look at the investment that occurred
23 during that time period. That's what we base an interim
24 refund on.

25 And because of that very thing, that's where

1 this extra amount of money came in because we had to
2 consider that purchased water while interim rates were
3 willing collected; whereas during the final rates,
4 purchased water was completely removed.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Okay. That answered
7 the question as to what the money was spent on. But now
8 to Mr. -- but to the -- to Mr. Reilly's point about the
9 statute referring to interim rates if previously approved
10 by the Commission must be discontinued and the money
11 collected pursuant to the interim rate relief must be
12 refunded to the customers of the utility with interest.
13 So just because we would have given them the money back,
14 we didn't. Does it now then apply? Is there a legality
15 here that says that if that money is still there, well, it
16 goes back to the customer?

17 **MR. WILLIS:** That I'm going to have to defer to
18 our legal staff.

19 **CHAIRMAN CARTER:** Ms. Brubaker.

20 **MS. BRUBAKER:** Thank you, Mr. Chairman. I would
21 like to -- I have to respectfully disagree with Mr.
22 Reilly's reading of the statute. I look at Section 4A,
23 where you have sale of the utility to governmental
24 authority, and it says any request for rate relief pending
25 before the Commission at the time of the sale is deemed to

1 have been withdrawn. Interim rates previously approved by
2 the Commission must be discontinued and any money
3 collected pursuant to interim rate relief must be refunded
4 to the customers of the utility with interest.

5 In my mind, what this really anticipates is
6 there is a rate case pending that there has been no
7 decision by the Commission on those rates, and I think
8 what it is meant to do is to keep --

9 **COMMISSIONER ARGENZIANO:** Wait a minute. Can
10 you repeat that? If there was a rate case pending?

11 **MS. BRUBAKER:** There is currently an open rate
12 case docket, but there has been no -- in this case there
13 has been a decision on that. And I don't think the
14 statute really contemplates the situation where you have
15 actually had an order that disposes of those interim
16 rates, which essentially I believe we have here.

17 **COMMISSIONER ARGENZIANO:** But doesn't it say
18 interim rates if previously approved by the Commission?

19 **MS. BRUBAKER:** Yes, ma'am. I'm not sure I'm
20 following you.

21 In my mind, what this statute contemplates is if
22 there has been no action taken by the Commission, this
23 tells the Commission what it needs to do. In this case,
24 we actually have an order that describes what should be
25 done with that \$74,000, and we now have the sale pending.

1 That's an unusual situation. The normal situation you
2 will have is a rate case that is pending, we are in the
3 interim process, there has been no final disposition by
4 the Commission of those funds, and there is a sale to a
5 governmental authority, so you need to know what happens
6 with the funds at that point.

7 **CHAIRMAN CARTER:** Hang on, Commissioners. Let's
8 give Legal a five-minute break.

9 (Recess.)

10 **CHAIRMAN CARTER:** We are back on the record.
11 And when we left Ms. Brubaker was in the middle of making
12 a statement. Ms. Brubaker, you're recognized.

13 **MS. BRUBAKER:** Thank you.

14 Mr. Chairman, perhaps I would clarify what I was
15 saying this way. We have an account that totals roughly
16 373, almost \$374,000. It's all interim funds. The
17 Commission has made a decision as to a portion of those
18 interim funds in the '02 order. That's roughly \$74,000 in
19 the amount. And consistent with that, staff is
20 recommending that decision be implemented, and that money
21 be returned to Aloha.

22 With regard to the remaining balance of that
23 fund, I agree that the statute operates. And, again,
24 that's what staff is recommending that those funds be
25 returned to the customers in whatever manner or vehicle

1 the Commission deems most appropriate.

2 **CHAIRMAN CARTER:** Commissioner Argenziano, did
3 that --

4 **COMMISSIONER ARGENZIANO:** Well, yes. I may have
5 a different take on that, but that helps.

6 **CHAIRMAN CARTER:** Thank you.

7 Commissioner Skop, you're recognized.

8 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

9 I have several points. I apologize, but like I
10 say, I have been holding on intently. The first point I
11 want to back up on, on something Ms. Brubaker mentioned
12 with respect to Better Water Now not being a legal entity.
13 Again, I don't know if they have been granted intervenor
14 status in this proceeding, but I do have concerns to the
15 extent that if they are making representations on a
16 solution that would bind the entire class of customers and
17 they are not legally entitled to make those
18 representations, what that does in terms of binding all
19 affected customers to the solution that they are
20 representing. So that is a separate and distinct issue,
21 and I think that Legal maybe should briefly speak to that
22 before we vote as to Issue 1.

23 The second thing I wanted to point out is on
24 this issue that I think Legal just tried to clarify, it is
25 confusing. I spent two hours hammering the details out in

1 our discussion with Legal Staff. I read all of the prior
2 orders. As a result of that, because it's so confusing, I
3 asked Legal Staff to prepare this time line for Aloha
4 escrow account funds. And I think they try and do a good
5 job of trying to explain how the 4.87 percent turns into
6 the amount of \$74,239 that staff is recommending be
7 released to Aloha.

8 I had some significant concerns over that. I
9 know that staff is arguing administrative finality. I'm
10 not happy, at least from my perspective, by the premise
11 that I may be bound by prior orders of the Commission.
12 But that being said, I think part of the issue here is we
13 don't have equity jurisdiction, because I know what I
14 would do if I had equity jurisdiction.

15 But the best argument, I think -- and, again, I
16 want to go to Mr. Reilly, because you mentioned the
17 statute said all. I don't find that word in that
18 statutory provision, so if you could please enlighten me
19 on that one point.

20 MR. REILLY: Very quickly. The statute says two
21 requirements, that the case is still pending, and it's
22 pending because of these numerous appeals, and then the
23 language is any money, which is the same as all. Any
24 money collected pursuant to interim rate relief, which we
25 know is the money in the escrow account must be refunded

1 to the customers of the utility with interest. So, two
2 requirements.

3 **COMMISSIONER SKOP:** Okay.

4 **MR. REILLY:** Pending case and any money.

5 **COMMISSIONER SKOP:** Fair enough. I know there
6 was some debate, and I want to be very cautious, because I
7 don't want to open the door to additional litigation.
8 But, how in your view, going to what you said previously,
9 is the acquisition price result -- the acquisition price
10 relevant to the discussion of the \$74,239 that's covered
11 by the prior Commission order?

12 **MR. REILLY:** It's relevant in the settlement
13 agreement where it's -- because there is no way to give
14 the customers CIAC credit. I mean, if they were to go off
15 and take all the money and not refund it or give it as an
16 escrow account for the customers, there would be no
17 credit. There would be no way to offset that dollar
18 amount to keep their rates down, because the rates that
19 these customers are going to be paying or started to pay a
20 very high increase was to repay the bonds. And the bonds
21 included two things; the 90.5 million to pay Aloha and
22 about \$12 million to do the black water problem, to solve
23 it, which was different than the Anion exchange. So,
24 therefore, there is no way that they could ever get the
25 benefit of the settlement agreement.

1 COMMISSIONER SKOP: I'm trying to -- again, I
2 spent a lot of time looking at the prior history. This
3 has been a long saga spanning over a decade. A lot of
4 history here. And I think it's important to try and be
5 fair not only to the consumers, but also to the
6 representatives of the company to make sure that we get
7 the right results.

8 I guess, at least from my perspective, looking
9 at the timeline, I do appreciate what staff is saying in
10 terms of the prior Commission order. I'm not so sure that
11 I necessarily agree. I think the best argument that one
12 could make why administrative finality would not attach
13 would be under the broad ratemaking ability in Florida
14 Statute 367.0113, public interest analysis liberally
15 construed, as well as defaulting back to the 367.071(4)(a)
16 argument that Mr. Reilly made.

17 I'm not so sure, again, what the right answer
18 is. A very complicated issue, a lot of history there.
19 You know, if, in fact, water was purchased during an
20 interim period, I could understand how staff could
21 logically conclude that that was a cost of doing business,
22 and perhaps those monies should be reasonably recovered as
23 compensatory rates during the interim period.

24 But, again, part of me is torn, and it would
25 make it a lot easier if the Commission had equity

1 jurisdiction to try and grapple with this. What is fair
2 in light of the totality of the circumstances. But I
3 think the best argument if the Commission were to go to
4 something different would be a public interest analysis.
5 But, again, I don't know how a court would rule. I think
6 a court would look at the record, and maybe conclude that
7 if monies were incurred that they -- you know, it depends,
8 and that's the unknown. I mean, this one is really not
9 clear. But, I think Commissioner Argenziano wants to --

10 **COMMISSIONER ARGENZIANO:** How about a motion?

11 Can I have a motion?

12 I move to give the entire amount, 374,000, to
13 FGUA to put in a stabilization fund to use for those
14 customers who spent that money and move the rest of
15 staff's recommendations, only because we are just beating
16 a dead horse. And as I have said so many times, we're not
17 allowed to do that by law.

18 **CHAIRMAN CARTER:** Commissioner Skop.

19 **COMMISSIONER ARGENZIANO:** Sometimes it's just
20 time to move.

21 **COMMISSIONER SKOP:** Mr. Chair, again, I'm not so
22 sure where I stand on that. I am in full favor of the
23 refund. Again, the mechanism from a legal perspective of
24 giving it to an entity that is representing itself on
25 behalf of all affected customers gives me great pause.

1 But, again, before we just -- hold on for one
2 second. There are two other issues that I'm not
3 comfortable with under the motion, and I want to speak to
4 those briefly. On Issue 6 --

5 **CHAIRMAN CARTER:** Hang on before you go. Let me
6 just see -- Commissioner McMurrin, do you want to be
7 heard before we go further on those other two issues?

8 **COMMISSIONER McMURRIAN:** Actually it was on
9 that. If you are moving on to Issue 6, if you don't mind,
10 because as I look back at --

11 **CHAIRMAN CARTER:** Commissioner McMurrin.

12 **COMMISSIONER McMURRIAN:** Thank you.

13 As I look back at the statute that Mr. Reilly
14 has passed out and highlighted there, I guess -- I mean, I
15 understand the concern about not wanting to give --
16 releasing that money to the utility, and I understand the
17 point that Mr. Reilly is making. I guess what I don't --
18 I can't read into this statute, or I guess it's what I
19 might read into this statute.

20 If we had other utilities that were transferred
21 to something like FGUA or a governmental authority as a
22 matter of right, we don't usually go back and look at
23 whether we had ever approved interim rates and look at
24 refunding interim -- I mean, so it seems to me that under
25 Mr. Reilly's argument that anytime we have a transfer to a

1 governmental authority we would need to go back and see if
2 we had ever approved interim rates and refund that money.
3 And that just doesn't seem -- that's not what you are
4 saying, but it seems like that would be a logical
5 extension of the argument you are making here to me.

6 MR. REILLY: You wouldn't go back. It is only
7 if it is a pending case that has not been completed.
8 That's the key language. You have to have the pending
9 case together with the fact that there is interim refunds
10 that have not been made. You have to have both.

11 So, no, if it is a normal case and they have
12 sold it to a governmental entity, no, you wouldn't go
13 back. But if it's a pending case -- and this is unusual
14 because this case was pending for so many years of
15 appeals. It is a very strange, and I agree with Ms.
16 Brubaker that this is not what the statute contemplated,
17 this Aloha situation. But it still, I argue, nevertheless
18 applies. It applies because of the unusual circumstance
19 in this case.

20 This is unusual that this client, this customer,
21 this utility had these numerous appeals keeping this case
22 pending for so many years until such time as they came up
23 and sold, sold to a governmental entity.

24 MR. WHARTON: What is notable to me, Mr.
25 Chairman, if I may --

1 **CHAIRMAN CARTER:** Mr. Wharton.

2 **MR. WHARTON:** -- is that Ms. Brubaker and Mr.
3 Reilly seem to be saying the same thing. What we are
4 totally glossing over is there is no pending case. The
5 only way to read this statute is if the pending case is
6 the request for rate relief. The fact that there has been
7 docket upon docket upon docket involving these monies,
8 there is no pending case for rate relief. And that Mr.
9 Reilly just said, these are the two things you must have.
10 That rate case was closed long ago, and these monies were
11 by order of the Commission, not just recommendation of the
12 staff, don't have the nature of interim funds. They may
13 be sitting in an account that a piece of paper says that's
14 what they are, but the Commission issued an order saying
15 those are not interim funds, and that rate case is long
16 ago closed.

17 **CHAIRMAN CARTER:** Commissioner McMurrian and
18 then I will go to Commissioner Skop.

19 Commissioner McMurrian.

20 **COMMISSIONER MCMURRIAN:** Thank you. I will just
21 close off on that thought.

22 And to Commissioner Argenziano about your
23 motion, I mean, I hope you will respect how I'm reading
24 the statute there. And I guess to me, if there was some
25 way -- if I could get to Mr. Reilly's argument, I would.

1 But, as I read it, and the way I think we have used it in
2 practice, I thought this was -- and he even agreed that
3 this was probably designed for a different thing.

4 When you are in the middle of rate case and
5 suddenly there is a transfer to a governmental authority
6 and you have got these interim rates outstanding, and this
7 says stop it and any money collected goes back to the
8 customers. And then presumably that governmental
9 authority would pick up and perhaps do something about the
10 rates, perhaps not. But I think to me that is how I read
11 what the intent was, and I'm afraid that the way that Mr.
12 Reilly is interpreting it sort of sets it up that
13 anytime we have a transfer, that even if we had approved
14 interim rates many, many years ago, and the order was
15 final, that we would have to look at possibly collecting
16 that money and refunding it to customers. And that just
17 doesn't seem like that could have been the intent of the
18 statute to me, so I guess that is where my concern is.

19 I think I agree with the staff recommendation
20 that that 74,000, whether I might like to do something
21 else with it or not, would be consistent to be released to
22 Aloha based on the analysis that they have laid out.

23 **CHAIRMAN CARTER:** Commissioner Argenziano and
24 then Commissioner Skop.

25 **COMMISSIONER ARGENZIANO:** And I understand that,

1 Commissioner McMurrian. I think, first of all, what I was
2 trying to do was move us along so that we wouldn't say the
3 same thing twenty times. And well taken. I mean, some of
4 these things are very important and they are good points.
5 And I am a firm believer to being fair that if the company
6 has expended the funds on something, well, then you give
7 them back what they expended on.

8 But when I look at it I see it a little
9 different. I look at it as a legal technicality, because
10 it looks like to me that the language does say what it
11 says, and since the order may have been -- it is still on
12 appeals, it is still all -- nothing has been given, so I
13 take the language for what it says. And even though it
14 may go against -- and I hate to say it, and I shouldn't
15 say I hate to say it, if the company expended the funds
16 then they deserve that, and grant it. But I do see a
17 legal technicality here, and what I am reading says
18 that -- I don't care about your final order, it's not
19 done. It's not done. The money still sits there. And
20 the language to me says that it should be returned.
21 That's what why I made what motion.

22 You know, whatever the Commission wants to do
23 is, of course, up to the majority of the Commission, but
24 that is just the way I see it. And, of course, in an
25 effort to just move things along, I'm open for other

1 motions if that one is not going anywhere.

2 **CHAIRMAN CARTER:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

4 I just -- again, I support moving things along.
5 I don't want to be redundant. Again, it is a very
6 complicated issue.

7 I do want to ask staff with respect to the
8 comment made on Page 12 of the staff recommendation at the
9 last sentence before the last paragraph. And it starts
10 with staff notes that the utility has never requested the
11 specific release of the \$74,239 amount. How does that
12 change, if any, the legal analysis on Aloha's failure to
13 request that money?

14 **MS. BRUBAKER:** Commissioner, I don't believe it
15 does. First of all, I would like to say I do agree that
16 this is a pending case. Again, you have heard my take on
17 the statute and what it contemplates. I do not know of
18 any regulatory requirement that a company who has been
19 found in an order entitled to a certain amount of funds
20 actually asks for those funds.

21 We all know that this case has been continuing
22 in nature. There has been no formal disposition of this
23 docket. It is open, it is a pending matter. I think the
24 real question to be answered is based on what the
25 Commission has decided in the past and whatever the

1 Commission interprets the statutes as requiring, what is
2 the appropriate action to take. To require a party to ask
3 for what has been previously determined as allowed to it
4 sounds a little bit like laches. And, again, that is an
5 equity remedy, and I wouldn't recommend that as being an
6 appropriate step for the Commission to take.

7 **COMMISSIONER SKOP:** Thank you.

8 And, Mr. Chair, just real quick on Issue 6. I
9 want to go back to something that Mr. Wharton mentioned.
10 He mentioned that Aloha did not have the ability to file
11 the annual report. One quick question to Aloha. It's my
12 understanding that Aloha Utilities is an ongoing
13 continuing concern, is that correct?

14 **MR. DETERDING:** Aloha is still a corporate
15 entity, yes, sir.

16 **COMMISSIONER SKOP:** So why in that case would it
17 not have the resources or could not acquire the resources
18 necessary to file that report?

19 **MR. DETERDING:** I can't speak to other than what
20 I told the Commission, which is that they only have two
21 members of their staff left, and that is the corporate
22 officers. So, I mean, it's certainly conceivable they
23 could hire people to put together an annual report if they
24 needed to.

25 **COMMISSIONER SKOP:** Okay. And then just one

1 final line. With respect to -- and this is not covered by
2 the staff recommendation, but I would like staff to
3 briefly speak to this. It is my understanding that the
4 escrow account was created as a result of a valid
5 Commission order. Is that correct, Mr. Willis?

6 **MR. WILLIS:** That's correct, Commissioner.

7 **COMMISSIONER SKOP:** And also with respect to
8 Issue 1, I think the revised staff recommendation due to
9 problems with the escrow account has recommended that the
10 escrow account be moved to a more appropriate trustee. Is
11 that correct?

12 **MR. WILLIS:** I'm sorry, I missed part of that
13 question.

14 **COMMISSIONER SKOP:** Okay. It's my understanding
15 that due to the problems with the escrow account in terms
16 of the monies being swept out of that account, that staff
17 has recommended that an alternate escrow agent be secured
18 so the funds can be properly maintained, is that correct?

19 **MR. WILLIS:** That's correct.

20 **COMMISSIONER SKOP:** Okay. All right. So I
21 guess my question is since that issue -- the escrow
22 account was created via -- well, I think the issue, with
23 all due respect, is a very important issue that I think
24 the Commission needs to address, so I want to stop and
25 have everyone try and listen to this.

1 It's my understanding the escrow funds were
2 swept out of this without approval of the Commission and
3 that would be in violation of a valid Commission order.
4 Is that staff's understanding?

5 **MR. WILLIS:** That would be my understanding,
6 yes.

7 **COMMISSIONER SKOP:** Okay. So my question is why
8 did not -- why did staff, or would it be appropriate to
9 recommend a show cause to the extent to address why that
10 money was swept out as a separate proceeding pending
11 against Aloha? Because, again, it gravely concerns me
12 that money was removed in violation of a valid -- or
13 potential violation of a valid Commission order. And I
14 think that if you look at the record, the record supports
15 that those funds were swept out of that account for 11
16 days. And it's my understanding, and, again, I would like
17 to hear from OPC on this, as protector of the public
18 interest, why it would not be appropriate to bring a show
19 cause action in the amount of \$55,000 representing \$5,000
20 per day in violation of an order.

21 **MS. BRUBAKER:** Commissioner, it is my position
22 that if the Commission deems it appropriate for staff to
23 bring a recommendation on show cause, we can certainly do
24 so, and will do so at your direction. I think one thing
25 about show cause is to think about the purpose of the show

1 cause, and that's to garner compliance with Commission
2 orders, statutes, and rules. And at the time this
3 recommendation was being prepared the funds were returned
4 to the bank and so that immediate concern was addressed.
5 And given the time constraints we were under, we wanted to
6 make sure that the most immediate concerns were addressed.

7 **COMMISSIONER SKOP:** Well, my concern would be
8 that had that action not taken, the Commission and the
9 state of Florida, being the representatives of the people,
10 would not have to spend significant amounts of time,
11 effort, and money to go try and restore that account and
12 maintain the status quo. So it would seem to me as a
13 matter of violation -- a potential violation of a
14 Commission order, that, again, we have expended time, and
15 I know any monies pursuant to statute resulting from a
16 show cause go into the state general fund, I think is my
17 general understanding.

18 But, again, that action was taken unilaterally,
19 and it may have been taken in good faith, I don't know,
20 but, again, I think that is an issue that may be relevant
21 to the extent that, again, we had to spend our time and
22 effort as a Commission as well as, I believe, OPC has a
23 significant effort, as well as the AG's office trying to
24 go address getting these monies back to where they should
25 have resided in the first place.

1 So I just wanted to understand whether that
2 would be appropriate. I don't believe it has been raised
3 by staff or what have you. But I, as a Commissioner, have
4 a concern and would like to get an answer to that.

5 **MR. WHARTON:** Chairman Carter, if I may address
6 what occurred.

7 **CHAIRMAN CARTER:** You're recognized.

8 **MR. WHARTON:** All right. With all due respect
9 to Commissioner Skop, I don't know what OPC -- the AG
10 wasn't even involved yet, to my knowledge, or the
11 Commission did. None of the efforts of any of those was
12 why the money was put back in. My understanding of what
13 occurred was, Aloha -- the president of Aloha was at
14 Regions Bank, who made a unilateral representation to him
15 that there had been a change in the law that had
16 fundamentally changed the account.

17 There is a lot that has gone on between Aloha
18 and the Commission. The belief of Aloha was that the
19 circuit court was the appropriate place for this to be
20 adjudicated, and that on that day the Commission could
21 come with a single signature and take the money out of the
22 account.

23 The money was taken out and immediately a
24 pleading was filed in the circuit court saying it would be
25 interpled into the circuit court. Regions Bank then, not

1 anyone else that I'm aware of, Regions Bank then called
2 Aloha and said they had made a mistake and the money was
3 put back in. That's the fundamentals of what occurred.

4 **CHAIRMAN CARTER:** Mr. Reilly.

5 **MR. REILLY:** Well, we agree with Commissioner
6 Skop that taking the money out of the escrow account
7 violated the Commission's order and it may well have
8 violated banking laws. And it's our understanding that
9 that is also a matter that is under investigation by other
10 authorities.

11 **COMMISSIONER SKOP:** Okay. But, again, I have
12 jurisdiction; and, again, if it is appropriate to bring a
13 show cause, because it is a Commission order, it is not
14 somebody else's order, it's not a court order, it is not
15 the Attorney General's order, it is the Public Service
16 Commission's order that created that escrow account. So,
17 again, if it is appropriate to bring a show cause for
18 whatever reason, again, subject to there may be, you know,
19 a good faith argument, I don't know. I don't know exactly
20 what happened, but I am very concerned by what happened
21 because it happened unilaterally.

22 And, again, that escrow account in terms of my
23 reading was created pursuant to Commission order, a valid
24 Commission order that is still standing, and that money
25 was taken out in violation of that order. Now, I don't

1 know who is at fault. That's to be determined, but that
2 is a factual matter to be discussed if a show cause action
3 is appropriate. But, again, I guess my question to OPC,
4 as well as our legal staff, and the Commission, and my
5 colleagues would be would it be appropriate in the
6 totality of the circumstances to bring that show cause
7 action?

8 **CHAIRMAN CARTER:** Based upon what I have seen in
9 the record, I don't see that, Commissioner. I don't see
10 that. I think that would be more of a continuation of --
11 and we talked about bringing this in for a landing, but
12 based upon my reading of the record and staff's
13 recommendation, I don't see the basis for a show cause.
14 Commissioner McMurrian, you're recognized.

15 **COMMISSIONER McMURRIAN:** I guess my thought is
16 that I do have thoughts about where the money went, and
17 how long it was out, and who asked for that money to be
18 taken out, and I have serious questions about it. I guess
19 my thinking is, though, that if it's under the court's
20 purview to look into that and resolve those things. And,
21 actually, the point that Mr. Forehand brought up earlier
22 about the interest rate, if those kinds of things can all
23 be looked at by a court and they can decide what the
24 proper remedy would be, if there was some kind of harm in
25 a sense to the customer -- not in a sense.

1 If there was harm to customers, for instance,
2 that money was taken out at one interest rate and it was
3 put back in at another interest rate and that that somehow
4 harmed the customers because there wouldn't be as much
5 interest on that escrow account, and all of those things,
6 if the court can look at those kinds of things and come up
7 with a remedy, then it seems like we don't necessarily
8 need to have a parallel docket here on that. Although I
9 do share your concerns about it. It does seem like there
10 were serious problems about how this was handled. I'm
11 trying to be very careful.

12 **MR. WHARTON:** My understanding was the account
13 was restored. It is the same account.

14 **CHAIRMAN CARTER:** I mean, the thing about it,
15 too, is that we can continue, but the bottom line is that
16 I think the customers are entitled to us bringing this in
17 for a landing. And that's the kind of concern that I have
18 is that if we continue -- and, I mean, I agree with you
19 that this is not perfect. This whole -- I mean, we can go
20 back and dig up ancient history and say it's not, but the
21 final analysis is that as we continue to go -- let's take
22 the court proceeding, is that the bank does the
23 interpleader proceeding and they are entitled to fees and
24 costs based upon the money wherever it was deposited, so
25 the customers are still left holding the bag.

1 MR. WHARTON: The bank has represented they are
2 going to absorb those. That's my understanding from a
3 newspaper article.

4 **CHAIRMAN CARTER:** It's still deferring the
5 customers -- it is deferring the customers their refund.
6 And, I mean, we can talk and all like that, but the bottom
7 line is we need to resolve this. The customers need to
8 get their money. We need to move forward. We need to go
9 ahead on and move forward. I think Commissioner
10 Argenziano is correct on that.

11 But I do think that, you know, you can go back
12 and look at all of this, is that there are concerns, there
13 are questions, and all like that, but I do think the
14 circuit court is the proper forum for that. Based upon
15 what I'm seeing in our record here that is presented by
16 staff, I don't see -- I mean, I don't see that it raises
17 to that level.

18 Commissioner Skop.

19 **COMMISSIONER SKOP:** I will yield.

20 **CHAIRMAN CARTER:** Commissioner McMurrian, you're
21 recognized.

22 **COMMISSIONER McMURRIAN:** I just wanted to say
23 one other thing that I forgot to say earlier. I guess if
24 we were going to continue to have an Aloha Utilities that
25 we had some jurisdiction over, I think I would be right

1 there with you, Commissioner Skop, because I think someone
2 would need to look into that.

3 I guess what I'm thinking, when I think of a
4 show cause it is to bring in someone that hasn't complied
5 with our order that is under our jurisdiction, and that
6 it's a way of saying you need to comply with our orders,
7 and in the future you know that you need to continue to
8 comply with our orders.

9 If they are not going to be under our
10 jurisdiction, I guess that makes it harder for me, but in
11 no way do I want what I'm saying to be interpreted as we
12 are trying to let whoever is at fault off the hook,
13 because I am totally not okay with that. It is just my
14 understanding that the court would be looking into that,
15 and that perhaps given that they would no longer be under
16 our jurisdiction that that is something that is best left
17 up to the court. I see that Mr. Reilly and Mr. Forehand
18 are -- I'm sorry.

19 **CHAIRMAN CARTER:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

21 And I appreciate your comments and that of
22 Commissioner McMurrian. I guess I would respectfully
23 disagree, and that's why I brought this up prior to voting
24 out Issue 5, which deals with the transfer. I mean, my
25 understanding is that we retain jurisdiction on all

1 pending matters before the Commission, before the transfer
2 and during.

3 I do not believe that the circuit court has
4 jurisdiction over a show cause that the Commission would
5 bring on virtue of violation of its own order. I don't
6 think that the circuit court -- I don't know how they
7 would address it. But not to be -- belabor the point, but
8 just to preserve it for the record, at least I would
9 respectfully move, and it may fail for a second, but that
10 the Commission on -- sua sponte on its own initiative
11 bring a separate, not to hold up this proceeding, but
12 bring a separate issue for a show cause action with
13 respect to the monies being removed from the escrow
14 account.

15 Again, that would be a separate docket issue.
16 It would not have to hold this up. But, again, that would
17 be voted out before we would transfer the certificate.

18 **CHAIRMAN CARTER:** Commissioner McMurrin.

19 **COMMISSIONER McMURRIAN:** It's probably not
20 proper to do this at this point, but can I ask staff a
21 question on the point that he has just raised about -- I
22 guess it would be to Jennifer -- Ms. Brubaker.

23 **CHAIRMAN CARTER:** Ms. Brubaker, you're
24 recognized.

25 **COMMISSIONER McMURRIAN:** I definitely agree with

1 Commissioner Skop that a court couldn't look at what
2 our -- perhaps, I'm not sure, I'm not an attorney, but
3 perhaps a court couldn't look at the same things that we
4 would have before us about trying to make sure that our
5 orders are complied with. But will they have, in your
6 opinion, enough jurisdiction to look at the whole incident
7 and decide if money might have been taken out improperly
8 given the fact that our orders are out there?

9 I know I am putting you on the spot again, but I
10 guess I'm trying to understand. It's a valid point if
11 there's something that the court can't look at that we
12 might only be able to look at.

13 MS. BRUBAKER: I would like to say I am a little
14 uncomfortable saying what a court could or could not look
15 at. I would contend that we always have jurisdiction over
16 our own orders, and from that perspective if the
17 Commission wishes to go forward with a show cause it
18 certainly could do so.

19 My argument is really one of, for lack of a
20 better term, maybe practicality. We always want to make
21 sure we have compliance and that things are as they are
22 supposed to be. And, again, the immediate concern about
23 the money being removed, the money is back in the account.

24 In my mind, the most efficient thing we can do
25 is make a decision on this and go through whatever appeals

1 process needs to be done, and bring a close to these Aloha
2 dockets. And that was the mind-set that staff had in
3 preparing and presenting the rec it has today. I'm not
4 sure that actually answers your question, come to think of
5 it, but --

6 **CHAIRMAN CARTER:** We still at any point in time,
7 we still reserve the right to do a show cause pertaining
8 to a matter with a company that's before us, or a
9 regulated entity, is that correct?

10 MS. BRUBAKER: That would certainly be my
11 contention.

12 **CHAIRMAN CARTER:** I would just -- you know, I
13 think that the cleaner thing to do is to deal with what is
14 before us. If there is -- you know, if that raises to the
15 level of a show cause or something, I mean, the money is
16 there, it has not gone anywhere. And I'm pleased to hear
17 that the bank has decided to waive their fees, because
18 that would have come right out of the corpus itself, and
19 the customers would have ended up paying twice for that.
20 That gave me some comfort on that. But I do think that
21 the critical thing for us, this is just my own opinion, is
22 just to resolve this matter and move forward.

23 I think a lot of times we talk about this Aloha
24 case, but sometimes we can drag it out, too. And I just
25 don't want to drag it out. We have got a good

1 recommendation before us with staff here. We have looked
2 it over, we have had a tremendous amount of discussion and
3 debate, and so I just think that would be an additional
4 factor that is probably not ripe at this time,
5 Commissioner.

6 Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 So I guess the motion I made would probably fail
9 for a second, is that correct, just for the record? All
10 right.

11 I would like to, with all due respect, go back
12 to Commissioner Argenziano's prior motion. I guess we
13 were in discussion. I think where I am at is I would
14 second her motion with respect to Issue 1.

15 **CHAIRMAN CARTER:** Hang on a second before you
16 second it. Before you second it -- because if there's
17 going to be a modification we may as well let it die for
18 lack of a second. Because if there is going to be a
19 modification, just let it die for a lack of a second,
20 because we have had a subsequent motion to that that has
21 also died for a second. So that motion is off the table
22 and we can move forward from there.

23 Commissioner, you're recognized. Commissioner
24 Skop.

25 **COMMISSIONER SKOP:** Okay.

1 Again, I thought procedurally I was going down
2 the right path, but I am going to make an alternate
3 motion, and we'll see where we go. And I'm going to do it
4 issue-by-issue.

5 **CHAIRMAN CARTER:** Okay.

6 **COMMISSIONER SKOP:** My motion on Issue 1 would
7 be to award or basically deny to staff recommendation to
8 withhold the -- or to grant the release of \$74,239 to the
9 utility. That the full amount approximately, subject to
10 check, \$278,000 -- staff, correct me if I'm wrong, but is
11 that the right number?

12 MR. WILLIS: It would be with interest.

13 **COMMISSIONER SKOP:** Okay. With interest. The
14 full amount held in escrow, \$278,000 plus interest to date
15 would be put in the rate stabilization account pursuant to
16 the request. I will be dissenting as to the disposition
17 of where the funds go, but, again, I'm making the motion
18 in the spirit that Commissioner Argenziano made it in
19 deference to her.

20 I have problems with it going to the rate
21 stabilization. I feel personally it should go to a direct
22 refund to consumers.

23 For Issue 2 --

24 **CHAIRMAN CARTER:** Hang on a second. I'm getting
25 a wave from our counsel. Let's take a moment. Let's take

1 five.

2 Ms. Helton.

3 (Recess.)

4 **CHAIRMAN CARTER:** We are back on the record.

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

7 In the interest that there may be some
8 additional questions, I'll withdraw my motion that I was
9 trying to articulate in progress and will make a motion at
10 the appropriate time.

11 **CHAIRMAN CARTER:** Thank you, sir.

12 Commissioner McMurrian, you're recognized.

13 **COMMISSIONER McMURRIAN:** Thank you.

14 I think I have two more. I guess it depends on
15 how the answers to those go. The first was to Mr. Reilly
16 regarding Issue 5, and your concerns about the
17 cancellation, and I know you talked a lot about -- I think
18 what you were saying is that we shouldn't cancel until we
19 had a lot of these other things that maybe -- maybe it was
20 a rule, statute, I can't remember that hadn't been
21 resolved yet, including the final disposition of the
22 escrow, the annual report, customer deposits and RAFs.
23 But I guess where I was confused, I wanted to make sure I
24 understood your concern there, that the new language that
25 staff had -- as staff had revised their recommendation on

1 Issue 5, they had included some language that said, you
2 know, consistent with the rule, upon disposition, and I
3 think most of those things are listed there, then that
4 certificate would be canceled. Does that get to your
5 concern or not?

6 **MR. REILLY:** It mostly does. The thing it
7 doesn't get to is your Rules Requirement 37 -- excuse me,
8 25-30.307(6) refers to (g), a statement describing the
9 disposition of customer deposits and interest thereon. I
10 think (h) is pretty well covered in terms of outstanding,
11 you know, the refunds to be owed. And it may be a
12 non-problem, but this was the \$750,000. It just felt that
13 before the Commission cancels the certificate it should
14 touch on those four things. Make sure the escrow account
15 has been taken care of, the annual report has been filed,
16 verification of the accuracy of the money you receive from
17 Aloha, both as to the 2008 and 2009 regulatory assessment
18 fees, and, then, fourth, just verify that the deposits
19 have been properly handled.

20 And maybe nothing more than verify it. We are
21 reassured of the fact that apparently \$750,000 did get
22 paid to FGUA. That gave us some reassurance, because
23 before we learned that out just before agenda we had this
24 language in the recommendation that said no customer
25 deposits or accumulated interest will be transferred to

1 FGUA. And that gave us a lot of concern because we had
2 all of these e-mails coming in from customers saying we
3 have outstanding deposits and we are worried about what
4 has happened to them.

5 But, again, it's all speculation. So we would
6 just respectfully argue that the Commission just make sure
7 that that is taken care of before they issue the
8 cancellation of certificate.

9 **COMMISSIONER McMURRIAN:** Okay. So let me ask
10 staff --

11 **CHAIRMAN CARTER:** Let me ask you a question
12 before you go.

13 Commissioner Skop, this is the language I was
14 looking for when we were talking, but I couldn't find it.
15 On Page 20, that language there is what was giving me the
16 opportunity to say that we could still -- because it says
17 at the completion of all pending proceedings before the
18 Commission, we still have the certificates, and that would
19 give us our basis for our show cause. That is what I was
20 talking about, we would still have the opportunity to go
21 back.

22 **COMMISSIONER SKOP:** And I think, Mr. Chair, that
23 I am not so sure it would be pending if we did not bring
24 it now. That was my only concern. But I respect that
25 that motion died.

1 **CHAIRMAN CARTER:** Okay. But that was my basis,
2 and I thank you, Commissioner McMurrin. I was looking
3 for that. I knew I had read it, but I couldn't find it at
4 the time.

5 Commissioner McMurrin, you're recognized.

6 **COMMISSIONER McMURRIAN:** Okay. I wanted to
7 follow up with the staff on those four points that Mr.
8 Reilly raised. To the extent the recommendation as
9 modified there doesn't encompass those things
10 specifically, let me just ask you how would you respond to
11 those four points that Mr. Reilly made? And if you were
12 to agree with him, would you want to change your language.
13 So, anyway, Ms. Brubaker or Mr. Willis.

14 **MR. WILLIS:** Let me take a little first shot
15 here. As far as the four points, I would agree on the
16 four points. I don't know that we would need to really
17 redo our language. I think the only thing that may not be
18 specifically covered here is the refund or turning over of
19 the customer deposits to FGUA. I thought it would be
20 under this language because it says refund, and the
21 company said in its filing that they were going to refund
22 those customer deposits to customers.

23 Part of our verification would be to see are
24 they refunds and were they turned over to the FGUA, either
25 one satisfies the requirement. I think it is covered.

1 **COMMISSIONER McMURRIAN:** You think the language
2 we have in the staff recommendation on Issue 5 now covers?

3 **MR. WILLIS:** I believe it covers all four
4 points. Because as far as the annual report goes, we only
5 need the annual report to cover the aspect of whether or
6 not they paid the correct regulatory assessment fees. And
7 I would have to agree with the company that those pages
8 they mentioned are the ones that we would have to have.

9 We have no other purpose for any other page in
10 the annual report. That would be for overearnings
11 purposes. That would be to attach future overearnings,
12 which this company will not have because they are not a
13 regulated utility after that point.

14 **COMMISSIONER McMURRIAN:** I think I agree with
15 what you are saying, but I guess I might ask that just to
16 make it cleaner that maybe you all could look at forming a
17 sentence somewhat like what you have there, but maybe
18 making it more broad than just saying consistent with
19 rule. Somehow identifying that those rule requirements in
20 a transfer situation have to be met and those
21 verifications that need to be done, because I'm afraid
22 that if you try to list them specifically and you don't
23 list something specifically that what Mr. Reilly has
24 mentioned there, but you agree with it, that you might be
25 suggesting that you are leaving it out. And I just think

1 that it is better to be very clear that either we somehow
2 make a more general statement about being consistent with
3 those rule provisions, or we try to specifically list all
4 the things that we need to verify before we cancel that
5 certificate. And I know that we will get to the motion
6 later, but that would be something that I think might be
7 important to try to make sure we nail down.

8 **CHAIRMAN CARTER:** Ms. Brubaker.

9 MS. BRUBAKER: Thank you, Chairman.

10 It certainly was staff's intention that all of
11 the matters actually that counsel for OPC has raised
12 actually fall under those pending matters, and we can try
13 to adjust the language to make it clear that all of the
14 broad items that fall under that rule are what is being
15 contemplated in this recommendation and the subsequent
16 issuance of the Commission's order.

17 The final disposition of the escrow account,
18 that is Issue 1. The annual report, that's Issue 6, I
19 believe. Of course, one of the reasons staff wants the
20 annual report information is so we can verify the accuracy
21 of the RAFs, absolutely. And there is even a discussion
22 today with Commissioner Argenziano about verifying the
23 customer deposits, and we certainly will follow up with
24 all of those.

25 **COMMISSIONER McMURRIAN:** And perhaps at the time

1 of the motion maybe we could even say consistent with our
2 earlier discussion to clarify the Commission's intent with
3 Issue 5. I mean, maybe it is even as simple as that
4 without having to list it all out. But I just wanted to
5 make sure that we all are clear about what we mean so that
6 whenever the order gets written that there are no
7 questions later.

8 I did have one other question, I think.

9 **CHAIRMAN CARTER:** You're recognized.

10 **COMMISSIONER McMURRIAN:** Which may also turn
11 into three or four. This goes to the annual report issue
12 on Issue 6, and we heard the company say that they could
13 provide 12 sheets, and they represented that they had
14 talked with you all about that, and that is what you
15 needed. But I don't think we ever heard from you all
16 about whether or not that was consistent with your
17 understanding, and then maybe, I think, after you all
18 respond to that, I think we should give the customer side,
19 too, an opportunity to say whether or not there is any
20 issues there with that.

21 Because it seems to me in filing a complete
22 annual report if we really don't need it, but I want to
23 make sure we have everything we need and we do have
24 statutory, you know, responsibilities and rules to follow,
25 as well. So I want to sort of flesh that out before we

1 vote.

2 **MS. MARSH:** I'm Anne Marsh with Commission
3 staff. The staff has had discussion with the utility
4 subsequent to the filing of this recommendation, and the
5 pages that they have offered up would meet our needs as
6 far as the verification of the regulatory assessment fees.
7 And just to reiterate those were Pages W-3 and S-3, which
8 are the income statements; W-9 and S-9, which are the
9 revenue pages, the cover page; and E-1, which is the
10 certification. I believe, though, that there is an issue
11 as far as the waiver of the rule.

12 Is there a problem with that, Ms. Brubaker?

13 **MS. BRUBAKER:** In situations like this when you
14 have a transfer to a government authority, and there is
15 not going to be any continuing regulation of the utility,
16 the important parts are the ones that have been discussed
17 here. And if it's satisfactory to all parties and to the
18 Commission, I believe we could deem the annual report
19 adequately filed with the information needed to verify
20 regulatory assessment fees.

21 **CHAIRMAN CARTER:** Mr. Reilly.

22 **MR. REILLY:** We would defer to staff on this if
23 that's -- because we were concerned that the regulatory
24 assessment fee was the correct amount. And just to
25 clarify the record, if we had language that said that the

1 utility will abide by (7) of this rule, and it will be
2 fully followed prior to issuing the certificate, I mean,
3 before canceling the certificate, I think that is the
4 citation. It is (7) of the rule. So long as the
5 Commission sees that each of those items are addressed,
6 then they will get their cancellation.

7 **CHAIRMAN CARTER:** I like the citation of the
8 rule itself, because that would say anything that follows
9 under the rule would be there, Mr. Reilly. So if you say
10 paren --

11 **MR. REILLY:** (7), I think, would be the
12 appropriate one on cancellation of certificate.

13 **CHAIRMAN CARTER:** Well, we want the full panoply
14 of the rule to apply, so I think that would give us a
15 global perspective. That will be inclusive, everyone
16 would know that it's inclusive of (7).

17 **MR. REILLY:** And we believe (6) has already been
18 satisfied, and that's the one that triggers the
19 acknowledging the transfer to FGUA, but that (7) has not
20 been fully complied with yet.

21 **CHAIRMAN CARTER:** I just think -- I mean, staff,
22 correct me if you think I'm wrong, but I believe that by
23 the citation of the rule itself then all the provisions
24 underneath the rule would apply, and particularly in the
25 context of our discussion here today. I think everyone

1 understands that we mean all of the parameters. Ms.
2 Brubaker talked about that, Mr. Willis has talked about
3 that. So all of those, that whole line of questions with
4 Commissioner McMurrin in terms of those four points, so I
5 think we're clear on that.

6 Commissioner McMurrin, you're recognized.

7 **COMMISSIONER McMURRIAN:** I think that was the
8 last of my questions. I just thought those were two
9 important points before we got to the motion stage.

10 **MR. DETERDING:** May I speak briefly to the
11 customer deposit issue, just so I am clear on what we have
12 provided?

13 **CHAIRMAN CARTER:** You're recognized.

14 **MR. DETERDING:** Thank you very much.

15 I agree with the Commission, Commissioner Skop,
16 and the others who spoke to this, that the wording in the
17 original application itself was, at best, inartful. The
18 contract, however, did call for a credit. When we are
19 heard that this was issue yesterday that may come up
20 today, we sent a letter over to the Commission explaining
21 what actually occurred. That, in fact, we did come to the
22 closing prepared to provide that credit and instead were
23 requested to provide a check.

24 Now, if you all want verification of that, I
25 guess, in my opinion, the easiest way to get verification

1 of that is to ask FGUA. I mean, we can tell you again in
2 another letter that that is what occurred, but I think we
3 did that yesterday.

4 Thank you.

5 **CHAIRMAN CARTER:** Commissioner McMurrian.

6 **COMMISSIONER McMURRIAN:** I guess how I would
7 respond to that is by approving staff's recommendation
8 perhaps as modified to make it clear that all of those
9 things have to be met, we wouldn't necessarily be saying
10 that you haven't already verified that. I don't know, I'm
11 not sure. I think we would just be saying we need to make
12 sure it is verified.

13 If you have done something by letter already
14 that satisfies that, then I'm not necessarily suggesting,
15 at least as one Commissioner, that you do something else.
16 I don't know if we need to also verify that with FGUA. I
17 will sort of leave that up to staff to decide whether or
18 not we need another independent verification, or if OPC
19 has some concerns about that and wants to share it. But
20 I'm not necessarily saying that those verifications
21 haven't already been done. I think we just need to be
22 clear that we are in line with what our rule says needs to
23 be done in a situation like this, and that we get all of
24 that verified before we cancel the certificate.

25 **CHAIRMAN CARTER:** Mr. Willis.

1 **MR. WILLIS:** Just to be clear, staff will check
2 with the Florida Governmental Utility Authority on that.

3 **CHAIRMAN CARTER:** Thank you, Mr. Willis.

4 Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. At
6 the appropriate time I would be willing to make a motion
7 as to Issues 2 through 6, or 2 through 7, if that would be
8 appropriate.

9 **CHAIRMAN CARTER:** 2 through 7?

10 **COMMISSIONER SKOP:** Yes.

11 **CHAIRMAN CARTER:** We have got a motion on the
12 floor.

13 **COMMISSIONER SKOP:** I would basically
14 respectfully move staff's recommendation on Issues 2
15 through 7 with the understanding as to Issue 5 as modified
16 to reflect the intent of the Commission in full compliance
17 with the rule.

18 **COMMISSIONER McMURRIAN:** May I ask a question?

19 **CHAIRMAN CARTER:** You're recognized for a
20 question.

21 **COMMISSIONER McMURRIAN:** Just on Issue 6,
22 because I think the recommendation says that they need to
23 file the 2008 annual report. Does your motion include the
24 need for the company to continue to file the entire annual
25 report as the recommendation says, or the twelve sheets

1 that it looks like there has been agreement with the
2 parties that as long as staff is satisfied that they can
3 verify what they need with those twelve sheets?

4 **COMMISSIONER SKOP:** If staff is satisfied with
5 the twelve sheets it would be amended pursuant to the
6 staff agreement.

7 **CHAIRMAN CARTER:** For the record, staff?

8 **MR. WILLIS:** For the record we are satisfied
9 with that.

10 **MS. BRUBAKER:** I'm sorry to interpret, sir. May
11 I ask a clarifying question?

12 **CHAIRMAN CARTER:** Yes, ma'am.

13 **MS. BRUBAKER:** Commissioner Skop, for Issue 2 it
14 appears to be tied to the disposition of Issue 1.

15 **COMMISSIONER SKOP:** Okay. I'll just amend my
16 motion to Issues 3 through 7.

17 **MS. BRUBAKER:** Thank you for the clarification.

18 **CHAIRMAN CARTER:** Issues 3 through 7?

19 **COMMISSIONER SKOP:** Yes.

20 **CHAIRMAN CARTER:** Commissioner McMurrian.

21 **COMMISSIONER McMURRIAN:** I can second.

22 **CHAIRMAN CARTER:** We are in discussion on Issues
23 2 through 7.

24 Commissioner Skop, you're recognized.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

1 Just briefly on Issue 5. Again, I'm
2 disappointed that FGUA is not here. Again, I know that
3 the statute suggests as a matter of course, but, again, I
4 guess it shows somewhat complacency that that is a done
5 deal. And I know historically Commission Davidson had
6 previously dissented that that was not automatic. Again,
7 if the customer interests were not impacted here I might
8 be inclined to go back to Commission Davidson's prior
9 opinion and use that, but I think that I'm comfortable
10 with the transfer, but am greatly disappointed that Mr.
11 Armstrong could not see fit to appear before the
12 Commission today.

13 **CHAIRMAN CARTER:** We're in debate. We're in
14 debate. Commissioner McMurrin, in debate.

15 Any questions? Any concerns on Issues 3 through
16 7. Is that correct, Commissioner?

17 **COMMISSIONER SKOP:** Yes.

18 **CHAIRMAN CARTER:** Moved and properly seconded.
19 Any further debate? Any further discussion? Hearing
20 none, all in favor let it be known by the sign of aye.

21 (Simultaneous aye.)

22 **CHAIRMAN CARTER:** All those opposed, like sign.
23 Show it done.

24 Now, Commissioners, we move to Issues 1 and 2.
25 Staff, kind of tee it up for us, please, on Issues 1 and

1 2, since those two are kind of interrelated or
2 interlocked.

3 **MR. WILLIS:** Commissioners, Issue 1 deals with
4 the amount of money that should be refunded to the
5 customers or put into the rate stabilization account.
6 Staff is recommending that \$74,000, which we believe falls
7 under the purview of administrative finality should be
8 given to the company and the remaining should be turned
9 over to the customers.

10 **CHAIRMAN CARTER:** Commissioner McMurrian, you're
11 recognized.

12 **COMMISSIONER McMURRIAN:** I can move the staff
13 recommendation, and I will just add that I appreciate all
14 the discussion we have had there. I have some concerns
15 with how we are going about it, but I'm persuaded in
16 looking at the statutory language that the 74,000 that
17 remains -- also given the arguments on administrative
18 finality, the 74,000 that remains should be, in my
19 opinion, released to Aloha consistent with the staff
20 recommendation.

21 **CHAIRMAN CARTER:** We have a motion. The motion
22 dies for lack of a second. Any additional motions on
23 Issues 1 and 2.

24 Commissioner Skop, you're recognized.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

1 I would -- and this may die for a lack of a
2 second. I respectfully move that we deny the staff
3 recommendation as to Issue 1. Basically, order the full
4 amount in the escrow account that was approximately
5 278,000 plus interest, which, to my understanding, is
6 approximately in totality \$374,000. And that amount we
7 order -- actually let me withdraw that. Because, again,
8 I'm going to be conflicted on this, and it is probably
9 easier for someone to make a motion. But unless we can
10 bifurcate on Issue 1, and let me try that and maybe we can
11 get the amount fixed.

12 **CHAIRMAN CARTER:** One second.

13 (Off the record.)

14 **CHAIRMAN CARTER:** I just had to conference with
15 our lawyer.

16 Commissioner Skop, you're recognized.

17 COMMISSIONER SKOP: Thank you, Mr. Chairman.

18 I'm going to take a better stab at this.

19 Basically, my motion would be to deny staff recommendation
20 as to Issue 1, to bifurcate it into two separate pieces.
21 Issue 1A would be to basically have the full amount in the
22 escrow be returned in lieu of releasing the \$74,239 to the
23 utility. I know the arguments, but I would disagree with
24 that. So it would be the full amount totalling
25 approximately \$374,000.

1 My second motion would be like 1B, and it would
2 basically be to order Aloha to refund those monies
3 directly to the consumer. And that will probably fail as
4 to 1B.

5 **CHAIRMAN CARTER:** So your motion is to bifurcate
6 Issue 1 into 1A and 1B, that's your motion?

7 **COMMISSIONER SKOP:** Yes, sir.

8 Is there a second? Hearing none, it dies for
9 lack of a second.

10 Commissioners, why don't we just move to Issue 2
11 and see if we can do it in descending order.

12 Commissioner McMurrrian, you're recognized.

13 **COMMISSIONER McMURRIAN:** I think the concern
14 with Issue 2 is that it ties back to Issue 1, as Ms.
15 Brubaker said earlier. So I think we -- am I right, Ms.
16 Brubaker, that we need to decide Issue 1 in order to
17 decide Issue 2?

18 MS. BRUBAKER: Well, the way it is currently
19 worded it talks about funds going into the rate
20 stabilization account. Of course, if that is not what the
21 Commission decides to do, we would need to modify that
22 language.

23 If you wish to rephrase the issue as should the
24 docket be closed, I think you could craft some language
25 that this docket should be closed administratively once

1 the Commission's disposition of the escrowed funds is
2 final, I suppose.

3 **CHAIRMAN CARTER:** Commissioners, it's beginning
4 to get ragged. Let's take a moment. Let me confer with
5 Ms. Helton. Just give me five minutes. We are on recess.

6 (Recess.)

7 **CHAIRMAN CARTER:** We are back on the record.
8 And when we left we said we would look at issues, and
9 right now -- Commissioner Argenziano, can you hear us
10 okay?

11 **COMMISSIONER ARGENZIANO:** Yes, I can.

12 **CHAIRMAN CARTER:** We're on Issue 2, and I was
13 recognizing Commissioner McMurrian on Issue 2.

14 **COMMISSIONER ARGENZIANO:** Are there any motions
15 on the table?

16 **CHAIRMAN CARTER:** Not yet.

17 **COMMISSIONER ARGENZIANO:** Okay. And if you
18 would, just refresh me on Issue 2.

19 **CHAIRMAN CARTER:** Issue 2, staff. Marshall.

20 **MR. WILLIS:** Yes. Issue 2 deals with the
21 closing of Docket Number 010503. Staff is recommending
22 that this docket not be closed. The docket should remain
23 open pending staff's verification of the establishment of
24 the rate stabilization escrow account in accordance with
25 the Commission's decision. Once the rate stabilization

1 account has been established, this docket should be closed
2 administratively.

3 **COMMISSIONER ARGENZIANO:** Okay.

4 **CHAIRMAN CARTER:** Commissioner McMurrian, you're
5 recognized.

6 **COMMISSIONER McMURRIAN:** This is for our staff.
7 If we were to make a motion on Issue 2 to perhaps just
8 know the docket should remain open pending other issues
9 subject to verification consistent with the decision, or
10 something like that, that sort of left it open to
11 whatever -- to do whatever things were needed to be dealt
12 with based on what our decisions are in all the other
13 issues without necessarily tying it to the rate
14 stabilization escrow account because we do have some
15 differences of opinion of that on Issue 1, I think. All
16 right. I guess I didn't make sense there.

17 What is the language we could use for a motion
18 to say that we want the docket to remain open
19 without going in -- should I just say no, the docket
20 should remain open pending other matters in the --

21 **MS. BRUBAKER:** You could do that. I think what
22 I was trying to craft and maybe inelegantly earlier was to
23 give some flexibility about what that disposition is going
24 to be. But this matter should be open pending the final
25 disposition of the Commission's decision in Issue 1.

1 Something like that, perhaps.

2 **COMMISSIONER McMURRIAN:** So moved.

3 **CHAIRMAN CARTER:** Commissioner Argenziano, did
4 you hear that?

5 **COMMISSIONER ARGENZIANO:** Yes, I think I did.

6 **CHAIRMAN CARTER:** And Commissioner McMurrian
7 moved -- based upon staff's presentation, Commissioner
8 McMurrian moved that issue.

9 **COMMISSIONER SKOP:** I'll second. I mean, if it
10 is revised to merely state that the docket should remain
11 open pending, as staff has modified, I am okay with that.
12 It's when it gets intertwined with that rate stabilization
13 is where I have problems. So if it's amended to get rid
14 of -- and strike the reference to rate stabilization, then
15 I will second the motion.

16 **MS. BRUBAKER:** I tend to do so consistent with
17 Commissioner McMurrian.

18 **CHAIRMAN CARTER:** Commissioner McMurrian, are
19 you comfortable with that?

20 **COMMISSIONER McMURRIAN:** I'm comfortable.

21 **CHAIRMAN CARTER:** Commissioners, any further --
22 we have got a motion and a second on Issue 2. Any further
23 questions? Any further debate?

24 Hearing none, all in favor, let it be known by
25 the sign of aye.

1 (Simultaneous vote.)

2 **CHAIRMAN CARTER:** All those opposed, like sign.
3 Show it done.

4 Before I go to Issue 1, I want to recognize our
5 General Counsel. Mr. Imhof, you're recognized.

6 **MR. IMHOF:** Thank you, Mr. Chairman.

7 I just wanted to make a couple of comments, Mr.
8 Chairman and Commissioners, that the Commission, we
9 believe, has jurisdiction to resolve all of these issues
10 that are before you. And also with regard to the
11 interpleader action, it is not at all clear that attorneys
12 fees would be taken from the corpus of the fee. This will
13 be addressed as part of a pending litigation. So I just
14 kind of wanted to clarify that for the Commissioners.

15 **CHAIRMAN CARTER:** Thank you.

16 I'm glad on that second issue, because that was
17 one of the issues that was really significant to me, is
18 that, you know, on typical interpleader actions the
19 persons filing that action will be entitled to fees and
20 costs, including attorney fees from that. But based upon
21 the representation that we have received today, it will be
22 nice to know that the bank is not going to charge the
23 customers who have already been charged on those proceeds.

24 Thank you.

25 With that, Commissioners, we are now on Issue 1.

1 Staff, would you set it up for us. Issue 1.

2 **MR. WILLIS:** Issue 1 deals with the disposition
3 of the escrow account and whether that should be put into
4 a rate stabilization fund pursuant to the Better Water Now
5 Committee, or, as a Commissioner has proposed, refunded.

6 **COMMISSIONER ARGENZIANO:** Mr. Chair, I move to
7 deny staff and move to give back all the funds to the rate
8 stabilization fund of FGUA.

9 **CHAIRMAN CARTER:** Commissioner Skop to be heard
10 on the motion.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

12 I support giving the entire amount, \$374,000,
13 back. My only problem is with the second part. I
14 recognize that that is what Mr. Forehand has requested,
15 but my problem is that Better Water Now is not a legally
16 recognized entity and is without standing to bring a
17 request that would effectively bind all affected
18 customers. That is my legal problem with the rate
19 stabilization, but I do support giving the full amount of
20 refund.

21 **COMMISSIONER ARGENZIANO:** Well, Mr. Chair.

22 **CHAIRMAN CARTER:** You're recognized.

23 **COMMISSIONER ARGENZIANO:** Let me see if staff
24 can help clarify that. I would like the funds to go to
25 FGUA for the purpose of getting back to the consumer, and

1 if that means that it is not -- that the group is not a
2 signatory on it, that is fine with me. I think Mr.
3 Forehand had indicated that was okay.

4 **CHAIRMAN CARTER:** That's correct.

5 **COMMISSIONER ARGENZIANO:** Then that is my
6 motion.

7 **CHAIRMAN CARTER:** Commissioner Skop.

8 **COMMISSIONER SKOP:** I need to look to Legal.
9 Again, I'm willing to second the motion, but,
10 again, my concern would be -- my preference would be, and
11 I guess I could do this in a concurring opinion, which
12 would allow me to second the motion. And correct me if
13 I'm wrong, but if I second the motion, I concur that my
14 preference would have been direct refund, is that correct?

15 **MR. IMHOF:** I believe so, yes, sir.

16 **COMMISSIONER SKOP:** Okay. Then I will second
17 the motion.

18 **CHAIRMAN CARTER:** It has been moved and properly
19 seconded. And the motion is -- staff, just for the
20 record, just kind of clear it up for the record. This
21 motion is that the --

22 **COMMISSIONER ARGENZIANO:** Do you want me to do
23 that, Mr. Chair?

24 **CHAIRMAN CARTER:** You're recognized,
25 Commissioner.

1 **COMMISSIONER ARGENZIANO:** Okay. The motion is
2 to take the full amount, I think it was 374,000.

3 **MR. WILLIS:** That's correct, Commissioner,
4 approximately 374,000.

5 **COMMISSIONER ARGENZIANO:** Okay. And have
6 that -- FGUA had indicated that they would put that in a
7 place where it would go to benefit those customers who
8 paid in. And I believe that's what Mr. Forehand had
9 indicated was what the majority of the customers had
10 indicated, and that really is the motion.

11 **CHAIRMAN CARTER:** And that was the rate
12 stabilization fund that was set up?

13 **COMMISSIONER ARGENZIANO:** Yes. Yes.

14 **CHAIRMAN CARTER:** Commissioner Skop, that was
15 your second on that?

16 **COMMISSIONER SKOP:** That was a second.

17 **CHAIRMAN CARTER:** We are in discussion,
18 Commissioners. We have got a motion and a second on the
19 table. We're in discussion.

20 Commissioner Skop and then Commissioner
21 McMurrian.

22 Commissioner Skop, you're recognized.

23 **COMMISSIONER SKOP:** Again, just briefly, I
24 seconded the motion. Again, my preference would have been
25 a direct refund due to lack of jurisdiction over FGUA and

1 also the standing issue with Better Water Now; but, again,
2 I have seconded the motion.

3 **CHAIRMAN CARTER:** Commissioner McMurrian.

4 **COMMISSIONER McMURRIAN:** This is a tough one,
5 because I do agree with Commissioner Argenziano's motion
6 with respect to the rate stabilization. I do still have
7 some lingering concerns about the 74,000. I do believe
8 that it would be consistent with the staff recommendation.
9 I do believe it would be a better practice to release that
10 to the utility, but I realize we have that motion on the
11 table.

12 I guess, Mr. Chair, I'm going to have to decide
13 if I can vote with that motion or not.

14 **CHAIRMAN CARTER:** Okay. Any further debate?

15 Commissioner Argenziano, anything further on the
16 motion?

17 **COMMISSIONER ARGENZIANO:** No, Mr. Chair.

18 **CHAIRMAN CARTER:** Okay. Commissioners, it has
19 been moved and properly seconded. All those in favor, let
20 it be known by the sign of aye.

21 (Simultaneous vote.)

22 **CHAIRMAN CARTER:** All those opposed? Show it
23 done.

24 And, Commissioner, thank you for calling in. I
25 appreciate your help on that. And with that,

1 Commissioners -- wait a minute.

2 Staff, is there any other matters on this item?
3 I think we have covered all of the issues. We went in
4 reverse order on 2 and 1, but I think we covered all of
5 them.

6 **MR. WILLIS:** We have covered all issues,
7 Commissioner.

8 **CHAIRMAN CARTER:** Okay. We're adjourned.

9 * * * * *

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

 :

COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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 4th day of May, 2009.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

Parties/Staff Handout
Internal Affairs/Agenda
on 4/21/09
Item No. 13
010503-WH
060122-WH
060606-WS
090120-WS

Select Year: 2008

The 2008 Florida Statutes

<u>Title XXVII</u>	<u>Chapter 367</u>	<u>View Entire</u>
RAILROADS AND OTHER REGULATED UTILITIES	WATER AND WASTEWATER SYSTEMS	<u>Chapter</u>

367.071 Sale, assignment, or transfer of certificate of authorization, facilities, or control.--

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

(2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.145. No fee is required to be paid by a governmental authority that is the buyer, assignee, or transferee.

(4) An application shall be disposed of as provided in s. 367.045, except that:

(a) The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right; however, the governmental authority shall, prior to taking any official action, obtain from the utility or commission with respect to the facilities to be sold the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. **Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.**

(b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.

(5) The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or

transfer to a governmental authority.

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability to provide service, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.

History.--s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 9, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 7, 15, ch. 82-25; ss. 6, 26, 27, ch. 89-353; s. 2, ch. 90-166; s. 4, ch. 91-429; s. 5, ch. 99-319.

Copyright © 1995-2009 The Florida Legislature • [Privacy Statement](#) • [Contact Us](#)