

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

INITIATION OF DELETION PROCEEDINGS DOCKET NO. 050018-WU
AGAINST ALOHA UTILITIES, INC. FOR
FAILURE TO PROVIDE SUFFICIENT WATER
SERVICE CONSISTENT WITH THE REASONABLE
AND PROPER OPERATION OF THE UTILITY
SYSTEM IN THE PUBLIC INTEREST, IN
VIOLATION OF SECTION 367.111(2),
FLORIDA STATUTES.

REQUEST BY HOMEOWNERS FOR THE DOCKET NO. 050183-WU
COMMISSION TO INITIATE DELETION
PROCEEDINGS AGAINST ALOHA UTILITIES,
INC. FOR FAILURE TO PROVIDE SUFFICIENT
WATER SERVICE CONSISTENT WITH THE
REASONABLE AND PROPER OPERATION OF THE
UTILITY SYSTEM IN THE PUBLIC INTEREST,
IN VIOLATION OF SECTION 367.111(2),
FLORIDA STATUTES.

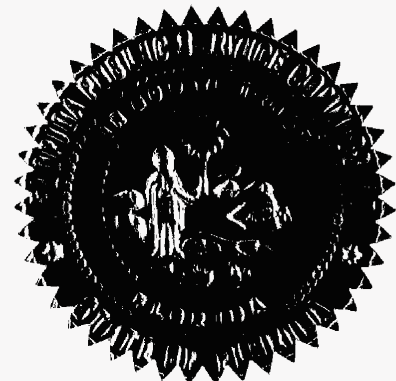
APPLICATION FOR INCREASE IN WATER DOCKET NO. 010503-WU
RATES FOR SEVEN SPRINGS SYSTEM IN
PASCO COUNTY BY ALOHA UTILITIES, INC.

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VOLUME 2

Pages 179 through 288

PROCEEDINGS: SPECIAL AGENDA CONFERENCE



1 DATE: Wednesday, August 17, 2005
2 TIME: Commenced at 9:35 a.m.
 Concluded at 12:45 p.m.
3
4 PLACE: Betty Easley Conference Center
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 4075 Esplanade Way
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P R O C E E D I N G S

1
2 CHAIRMAN BAEZ: Good morning. We'll call this
3 Special Agenda to order.

4 Mr. Melson, I thought what we would do is have, have
5 you all tee up the issue for us perhaps for the benefit of the
6 Commissioners and the rest of us here, walk through the staff
7 recommendation briefly, and then we'll, we'll have statements
8 from the interested parties and the company as well, if that's
9 all right.

10 MR. MELSON: All right. I'm Richard Melson, General
11 Counsel to the Commission. We're here today on staff's
12 recommendation to accept an offer of settlement that Aloha
13 submitted to the Commission on July 20th. In terms of sort of
14 outlining the major provisions of the settlement, I'm going to
15 probably talk through the chart that begins at Page 8 of the
16 staff recommendation. That's the same chart that was included
17 in the Special Report that was distributed to customers at the
18 customer meeting on Monday.

19 The first major section of the agreement deals with
20 water quality and how we move forward from here to address the
21 water quality problem. The agreement calls for Aloha -- Aloha
22 has had the University of South Florida under contract to
23 examine water treatment options. That report is literally due
24 any day now. The estimate was that it would be available on
25 August 15th. I understand it is likely to be available later

1 this week or early next. As soon as that report is in final
2 form, Aloha is going to provide copies to the Commission,
3 Public Counsel, the parties to this case, and then Aloha is
4 going to spend the next 60 days analyzing the cost and rate
5 impacts of the various options and selecting what Aloha
6 believes is the most cost-effective solution that offers the
7 best opportunity for addressing the issue.

8 The settlement, offer of settlement calls for the
9 Commission, after Aloha has submitted its preferred option, to
10 go through the process of selecting an option and essentially
11 directing Aloha to go forward with it. In that process we
12 expect to be assisted by Dr. Taylor of the University of
13 Central Florida, who right now is under contract to the
14 Commission in the deletion docket. But if the offer of
15 settlement were approved, we would intend to put him under
16 contract to assist us in evaluating the options.

17 The settlement agreement is open on how that will be
18 handled. My anticipation, I think staff's anticipation is we
19 would try to handle it as a Proposed Agency Action so that we
20 can get to a resolution as quickly as possible. And I would
21 expect after the study has been submitted and during the time
22 that we're working with our expert, we also would be talking
23 with officials from Pasco County about their ordinance and the
24 extent to which what we're doing is consistent or, or
25 complementary to what's in their current ordinance. We also

1 expect to involve Office of Public Counsel and the customers.
2 The goal, staff's goal would be to come to a solution that
3 everyone agrees is best. If that's not possible, we would
4 bring a recommendation on what staff believes is best and ask
5 that you issue a PAA order.

6 Obviously if at that point there are customer
7 interests that think that's not the best, the customers would
8 have a right to request a hearing and to go through a process
9 with a formal hearing to select an option. One thing Aloha has
10 given up is that if we select an option that is something other
11 than the one they prefer, they have agreed not to protest or to
12 appeal an order simply because they don't think we've chosen
13 the best option.

14 If the -- they're not completely giving up their
15 right to protest or appeal. If we told them to do packed tower
16 aeration and said do it in three months, they couldn't say,
17 well, packed tower aeration wasn't our choice, but they could
18 say three months is unreasonable. So we can't guarantee there
19 won't be a protest, but at least there won't be a protest based
20 on the particular methodology we've selected.

21 There were some comments during the customer meeting
22 that one flaw in the settlement was that it did not set out
23 hard timetables for Commission action or for implementation of
24 an option. Frankly, Commissioners, I think that would be an
25 impossibility at this point. First, because as we select an

1 option, interested parties, customers, Public Counsel would
2 have the right to request a hearing. That's beyond our
3 control. So we can't even lay out a timetable for getting to a
4 final Commission decision.

5 Second, assuming there is no protest by anyone, no
6 requirement for hearing and we're able to get to an order in
7 the January time frame, which I think is realistic, we don't
8 know now what option is going to be selected, and the
9 permitting, design, construction time is going to vary based on
10 the option. It's my anticipation that if we go the settlement
11 route, that the order that approves an option would lay out
12 some milestone dates. So we will know when we, when we select
13 an option what we're looking at in terms of time frame. But I
14 think it's impossible for us to know it today.

15 Another concern that was expressed at the customer
16 meeting was that the settlement guarantees Aloha cost recovery
17 and provides no oversight of the cost, and that was contrasted
18 with a description of the Pasco County ordinance that was said
19 to involve continuing cost oversight by Parsons Engineering.

20 Let me say a couple of things. First, the settlement
21 agreement provides that once we select an option, Aloha can go
22 forth and implement that option and be assured that a year from
23 now, two years from now the Commission is not going to second
24 guess and say, well, you should have done something else. So
25 in that respect, the cost of implementation is guaranteed. But

1 if Aloha goes out and spends \$10 million when they should have
2 spent \$5 million, the recovery of \$10 million is not
3 guaranteed. The Commission will exercise its normal prudence
4 review when Aloha comes in to recover the cost of that project,
5 the same as we do for any other type of project.

6 I went back and looked at the county ordinance
7 because I was, I did not recall there being an oversight
8 provision in the county ordinance, and, in fact, there is not.
9 I talked this morning with the Assistant County Attorney who
10 drafted the ordinance. He said in earlier drafts there had
11 been some language about the county having continuing cost
12 oversight. That was taken out of the final ordinance. The
13 county frankly said that they didn't think under the special
14 statute that was their job; that under the special law that
15 gave them the authority to adopt the ordinance, the costs were
16 recoverable basically at the Commission, and that the county
17 expected that it would be Commission oversight ultimately of
18 the cost recovery. So in that respect, whether Aloha had
19 proceeded under the ordinance or whether they proceed under the
20 settlement, the economic oversight by the Commission ought to
21 be exactly the same.

22 Let me check my notes a minute and see if I missed
23 anything on this piece of it. Oh, another concern that was
24 expressed was that the Commission might choose an option and
25 customers would then have no input on the option or on the

1 ultimate cost. I think that also is a misconception. Again,
2 the process we go through to select an option will be at least
3 a Proposed Agency Action, which gives customers the opportunity
4 for a hearing. Once we have selected an option, Aloha has
5 constructed and they come in for rate relief, Public Counsel,
6 customers will have an opportunity to intervene in that case
7 and challenge not the option but the reasonableness of the
8 dollars that were spent to implement that option. So the full
9 normal process would apply throughout. No one is being cut out
10 of any rights to review costs or to review the option.

11 I'm going to skip forward just a moment to Page 10 of
12 the staff recommendation that deals with the certificate
13 revocation docket because this really is related to water
14 quality.

15 If you vote today to approve the offer of settlement,
16 the, the January hearings would be cancelled, but those -- the
17 investigation docket and the show cause docket would not be
18 closed. They would be placed in abeyance. In the event that
19 Aloha failed to meet any of its obligations between now and the
20 time that the Commission approved a water treatment option, the
21 Commission could take those cases out of abeyance and proceed
22 forward. The agreement does contemplate that once we select a
23 water quality option, at that point the Commission would
24 dismiss the show cause case in the investigation docket, and
25 that's the point at which all of the litigation really ends and

1 we would move forward. I think there was a suggestion this
2 morning in a St. Pete Times editorial that it might be
3 appropriate to wait until we saw what Aloha's preferred option
4 was before we abandon the deletion docket. Well, even if the
5 settlement is approved, A, we're not abandoning the deletion
6 docket. We're holding it in abeyance unless and until we get
7 to a point where the Commission selects an option. And as I
8 said, while it will be interesting to see what option Aloha
9 proposes, they're not going to make a formal proposal until
10 60 days down the road, and at that point the Commission is not
11 bound by that proposal. We will have the right to look at the
12 whole host of options that Aloha's study puts on the table and
13 at any options that our independent consultant puts on the
14 table.

15 I'm going to turn back now to Page 9 of the
16 recommendation, the repiping program. There was a lot of
17 concern expressed at the customer meeting about the limitation
18 on the number of customers who could take advantage of the
19 repiping program and about the fact that the repiping program
20 did not pay all of the cost of repiping homes. The repiping
21 program was something that staff insisted on during the
22 negotiations. We never expected that the repiping program
23 would pay 100 percent of the cost of repiping. I think the
24 dollar figure we had in mind as a cost was \$6,000 to \$7,000,
25 and I think that was probably borne out by the customer

1 testimony, at least for the larger homes. I think we did hear
2 one customer with a smaller home say that she had spent about
3 \$2,500 to \$3,000. Staff's goal was to get something that we
4 believed would be significant financial assistance and to get
5 it for as wide a customer base as we could. Obviously, if
6 money was unlimited, you could pay to repipe every home in
7 Pasco County, but money is not unlimited. We negotiated back
8 and forth with Aloha about the pool of dollars available to
9 support this, and we came up with what staff believed is not a
10 perfect solution but is the best achievable solution. And I'd
11 point out to you that it's a solution that is not achievable in
12 a litigation mode. This Commission has twice voted, and I
13 believe correctly, that we could not order Aloha to do even a
14 loan program because under our rules their responsibility stops
15 at the customer side of the meter. And so this is a program
16 that can come about only through settlement.

17 The St. Pete Times editorial, and I think by and
18 large it was a balanced editorial, I was very pleased to see
19 it, but it raised the question, if Aloha is going to solve the
20 black water problem, why is there a need for repiping at all?
21 The answer to that question is solving the problem on a
22 going-forward basis is not going to deal with pinhole leaks
23 that exist today in pipes. This is an effort to recognize that
24 some customers do have problems and to provide some help,
25 albeit not total help, for solving that problem.

1 The next item is the interim rate refund. As you
2 know, the Commission ordered Aloha last October to refund an
3 additional \$276,000 in interim rates. Aloha exercised its
4 right to appeal that order, and that case is scheduled for oral
5 argument on September 13th in the 1st DCA. I think there was a
6 misconception at the customer meeting that Aloha is violating
7 that order. In fact, as our rules require, when Aloha appealed
8 that order and indicated that if they lost in court, they would
9 then make the refund, the Commission issued a stay. So at this
10 point Aloha is under no legal obligation to refund. That legal
11 obligation will arise if and when the Commission wins the
12 appeal.

13 With regard to the appeal, is there risk? Yes. I
14 read the briefs; there are good briefs on both sides. And,
15 frankly, I can't sit here today and predict how the court will
16 rule. What Aloha does in the settlement is to say on the
17 second effective date, and let me tell you what that is, if you
18 vote to approve the settlement, today would be the first
19 effective date and some pending litigation gets placed into
20 abeyance.

21 Once the order reflecting today's vote is issued and
22 becomes final, which will be 30 days after it's issued, that's
23 the second effective date. If there is no appeal of the offer
24 approving the settlement on the second effective date, Aloha
25 would dismiss the interim refund appeal and would start the

1 process of making the \$276,000 refunds. At a minimum the
2 settlement gets dollars to customers earlier. At a maximum it
3 gets them dollars they would not otherwise get because, as I
4 say, there is a risk to that appellate process. The court
5 could overturn the Commission.

6 COMMISSIONER DEASON: Let me interject a question at
7 this point. The oral argument in the refund case is September
8 the 13th?

9 MR. MELSON: 13th, I believe, yes, sir.

10 COMMISSIONER DEASON: When would be the earliest date
11 we could expect a decision?

12 MR. MELSON: I have seen decisions in, per curiam
13 decisions where the court doesn't write an opinion as early as
14 three weeks. If they write an opinion, it could be six months
15 or more. We've had some that have gone a year after oral
16 argument before a decision. I typically say two to six months.

17 COMMISSIONER DEASON: Well, it would probably be
18 unlikely, but what if in the unlikely event we were to approve
19 the settlement and before the settlement became final the court
20 made a decision one way or the other, what happens in that
21 event?

22 MR. MELSON: If you approve the settlement, that
23 event doesn't happen because the parties, on the first
24 effective date, Commission staff and Aloha would file a joint
25 motion with the court asking to hold that appeal in abeyance so

1 that we quit spending dollars on, on that piece of litigation.

2 COMMISSIONER DEASON: So then there probably would
3 not even be oral argument on the 13th in that event.

4 MR. MELSON: Correct. Correct. That's the
5 anticipation.

6 Another major factor in the settlement are the
7 provisions regarding attorneys' fees and litigation costs.
8 Aloha has agreed not to seek to recover from ratepayers its
9 litigation costs associated with the earlier customer petitions
10 to delete territory, and that figure is around \$425,000. And
11 then it's legal fees and costs with regard to the water quality
12 proceeding, the show cause docket, the refund appeal, an
13 existing circuit court action. As of the end of June, Aloha
14 had incurred about \$577,000 in those activities. If we proceed
15 on a litigation track, those figures are going to continue to
16 grow.

17 When I was doing my PowerPoint presentation during
18 the customer meeting, I indicated that there was a risk, and
19 staff believes it's a substantial one, that on the litigation
20 track customers would be required to pick up a substantial
21 portion of those fees. And I remember hearing somebody from
22 the audience saying, "Yeah, if Aloha wins." Well, this is not
23 a case where, not a situation where attorneys' fees are tied to
24 Aloha winning or losing. Aloha may very well have a right to
25 collect those attorneys' fees from customers win, lose or draw.

1 So in my mind this is a substantial concession by Aloha.

2 On Page 10 of the staff recommendation under the
3 heading "Other Litigations," I indicated as of the first
4 effective date there's a lot of ongoing litigation that will be
5 placed in abeyance. And that essentially will, my hope is,
6 free some of Aloha's resources to quit spending money on
7 lawyers in litigation and begin spending it on a solution. I
8 know their -- Aloha has been characterized as litigious and
9 fighting every step of the way, and that's true. But as a
10 lawyer, I can understand that. If I had a client who believed
11 that their property was about to be taken by government, I
12 would hire the best lawyer I could and I would tell him money
13 is no object, you know, defend by every legal means. Aloha has
14 been doing that. And while I can understand the appearance
15 that they are being litigious, and they are, I don't think
16 they're doing anything sort of morally wrong. And I know that
17 sort of flavor came through at the customer meeting.

18 One other provision in the settlement acknowledges
19 that Aloha is going to need to purchase water to supplement
20 what it pumps from its wells. It is currently exceeding the
21 withdrawals permitted under its Consumptive Use Permits. It
22 has entered into a contract with Pasco County that calls during
23 2006 for Aloha to purchase, I believe, up to 1.5 million
24 gallons a day. What the settlement agreement acknowledges is
25 that Aloha intends file a limited proceeding to recover the

1 cost of that additional purchase from Pasco County. What the
2 Commission would commit to, if you were to approve the offer of
3 settlement, is to some procedural timetables for handling that
4 case. Limited proceedings are, are clearly authorized under
5 the statute, and this would fit under our rule that says what
6 is an appropriate limited proceeding. But limited proceedings
7 don't normally have any time frames associated with them. What
8 staff has agreed would be that the Commission would process
9 that kind of petition to the state of a Proposed Agency Action
10 within 90 days, and that if there were a protest, the
11 Commission, within six months after the protest, would get to a
12 final order. Those time frames are consistent with the types
13 of things we would do even in a larger PAA type water and
14 wastewater rate case, and we believe they're, they're
15 reasonable ones.

16 Just so you're aware, as I read the purchase contract
17 between the county and Aloha, we can expect Aloha to be in here
18 with that kind of a limited proceeding petition whether you
19 approve the settlement or not. They need to begin purchasing
20 water. Their obligation to purchase from the county is
21 contingent on them getting the cost recovered through rates.
22 The county's obligation to sell to Aloha is contingent on Aloha
23 getting the cost recovery through rates. Essentially the
24 county doesn't want to begin selling water and not know that
25 they've got a solvent buyer to pay their water bills.

1 There are a number of other provisions in the
2 settlement. In general I would call them boilerplate type
3 provisions. We agree to --

4 COMMISSIONER DEASON: I'm sorry. I need to interrupt
5 one more time, Mr. Chairman.

6 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

7 COMMISSIONER DEASON: Is the county on record as
8 saying that they would not sell to Aloha until this Commission
9 approves the recovery of those costs?

10 MR. MELSON: That's what, that's what the purchase
11 contract says, and I think I can find that language for you.
12 "The utility will have no obligation to begin purchasing such
13 water until the rates necessary to receive such service have
14 been approved by the Florida Public Service Commission and such
15 approval is final. The county shall have no obligation to
16 provide such additional bulk service until the rates to cover
17 the cost of such service to the utility have been approved, and
18 such approval by the Florida Public Service Commission is a
19 condition precedent to the county's obligations hereunder." So
20 I think it's pretty clear in the contract that the county does
21 not have to begin selling the additional water until Aloha has
22 been permitted to recover that cost. As I said, the other
23 provisions are pretty much boilerplate. You're limited to
24 accepting the offer of settlement in its entirety or rejecting
25 it in its entirety.

1 Aloha does not admit to violation of any statute,
2 rule or order. Again, I think there probably was some comment
3 at the customer meeting that, you know, Aloha is not admitting
4 guilt. I will tell you that is a provision -- I drafted much
5 of the first draft of this offer of settlement to reflect what
6 we were verbally agreeing to with Aloha. That was a provision
7 I drafted. I have sat on that side of the table in a number of
8 settlements, and even when I have had a client agree to make a
9 \$500,000 voluntary contribution to the state of Florida,
10 clients have not admitted guilt. And, frankly, I think anybody
11 sitting on that side of the table would be poorly advised if
12 they did because if you admit guilt, you never know what future
13 collateral litigation that's going to lead to. So I view that
14 as a boilerplate provision. I look instead to the fact that
15 Aloha is making some financial commitments not as a recognition
16 of guilt but as a recognition that they need to step up to the
17 table and take some real affirmative action to try to put these
18 issues behind them.

19 And then, of course, if the offer of settlement is
20 not approved, the offer is not admissible in any future
21 proceeding, the staff's recommendation is not admissible in any
22 future proceeding, and no party waives any right to continue
23 beating each other over the head. And, again, that's standard
24 language in these types of agreements.

25 If you've got any questions about specifics, I'd be

1 happy to try to answer them, Commissioners.

2 CHAIRMAN BAEZ: Commissioner Deason.

3 COMMISSIONER DEASON: It's your recommendation that
4 the offer -- if the offer of settlement is approved, that it
5 can be done as a final order; is that correct?

6 MR. MELSON: Yes, sir. And the reason for that is
7 you really have to look at the nature of what the, approving
8 the settlement commits the parties to. The only two things
9 that really commits the Commission to do, three things, are to
10 hold some cases in abeyance, ultimately to dismiss those cases,
11 and, once they're dismissed, not go back and bring a new action
12 against Aloha based on the same sorts of allegations, and to a
13 timetable for procedurally handling a limited proceeding.

14 We originally started the deletion cases last year,
15 early last year based on customer petitions. In January of
16 this year it was pointed out to us that in a license revocation
17 proceeding that is really a proceeding that the Commission has
18 to initiate. We cannot do it on a customer complaint. Bottom
19 line, the decision to prosecute and go after the certificate is
20 one that the Commission and the Commission alone can make.
21 Customers can't require us to initiate a proceeding, they can't
22 require us to keep a proceeding alive. While obviously the
23 existence of that proceeding is of great concern to them,
24 legally they don't have a right to have it continued. And so
25 their substantial interests, in my judgment, are not affected

1 by the provisions that first hold that case in abeyance and
2 then ultimately delete it. That, to me, is an exercise, if you
3 will, of prosecutorial discretion.

4 With regard to the timetable for handling a future
5 case, again, that's procedural and that does not determine
6 anyone's substantial interest. The place where substantial
7 interest could be affected is if we select a \$15 million
8 solution instead of a \$5 million solution. Customers have a
9 point of entry and an opportunity to participate there.
10 Another place customers could be affected is in the proceeding
11 that we anticipate will be filed to recover the cost of
12 purchasing water from the county. Customers have a right to
13 participate there and to protest any Proposed Agency Action
14 order we could issue. A third place customers could be
15 affected is when Aloha comes in to seek recovery of the cost of
16 whatever option we've approved. Again, customers have a point
17 of entry there.

18 Given all of that, it's, it's my office's judgment
19 that this can be issued as a final order because the only
20 substantial interests within the meaning of the statute that
21 are affected are those of Aloha, and Aloha has agreed to the
22 provisions that affect its interests.

23 COMMISSIONER DEASON: Another question.

24 CHAIRMAN BAEZ: Commissioner Deason.

25 COMMISSIONER DEASON: There was -- in Monday's

1 customer meeting, you know, the, the subject of the county
2 ordinance came up and then we had some questions of the effect
3 of that ordinance, whether it is or is not affected by the
4 settlement. Can you give me your general understanding of the
5 effect the county -- the settlement would have on the county
6 ordinance, where it fits into the overall hierarchy of our
7 decision-making process here at the Commission?

8 MR. MELSON: Okay. The settlement, I don't think,
9 has a direct effect on the county ordinance one way or another.
10 At this point the special law that authorized the county to
11 adopt that ordinance was a little unusual in that it provided
12 that the adoption of it would be agency action. And so while
13 counties are not ordinarily subject to Chapter 120, the Special
14 Act giving power to the county to take that action did subject
15 them to Chapter 120. Aloha, after the ordinance was adopted,
16 has filed a challenge to the ordinance at the Division of
17 Administrative Hearings. I'm not sure of all of the
18 allegations, but essentially it's that the ordinance does not
19 comply with the Special Act. And that's scheduled, as far as I
20 know, to go to hearing in October. And at that point an ALJ
21 will make the decision whether to uphold the ordinance or not,
22 and presumably that ALJ's decision is appealable. So at this
23 point the ordinance is not really effective against Aloha.

24 The ordinance, if it's upheld, requires Aloha at a
25 minimum to do forced draft aeration on its wells, and it

1 contains a variance provision which allows the county to grant
2 a variance from that if Aloha proposes a method that removes an
3 equivalent amount of sulfides and is also technologically and
4 economically feasible. It seems to me if the Commission
5 approves the settlement, forced draft aeration is one of the
6 technologies that is being addressed, I understand, in the
7 University of South Florida study. So it clearly is an option
8 that is going to be available for the Commission to consider.

9 If you determine that that is the best, most
10 cost-effective option, approve it, then the county ordinance
11 and the Commission's action are entirely in line. If, on the
12 other hand, based on review your staff and consultant do and
13 potentially a hearing, you decide that some other option is
14 more cost-effective for the customers, ultimately, because
15 you're the economic regulator, I think that decision would
16 control. The Special Act provides that the county cannot
17 impose a requirement that is inconsistent with a Public Service
18 Commission or DEP requirement. Obviously at the time the
19 ordinance was enacted, we did not have a requirement that it
20 would be inconsistent with. Conceivably we could create one.

21 Another issue, frankly, with regard to that ordinance
22 is the Special Act that gave the county that authority expired
23 on July 1st of this year, and I think the effect of that
24 expiration is likely to be something that Aloha is going to
25 discuss in their DOAH proceeding.

1 Bottom line, it would be my hope, and, again, I
2 talked just very briefly this morning with the Assistant County
3 Attorney, that if the settlement is approved and we move
4 forward with looking at an option, that we will be involving
5 all of the players, including the county, and hopefully coming
6 up with a solution that everyone can agree is the best. Long
7 answer to a short question. I apologize.

8 CHAIRMAN BAEZ: Commissioners, do you have questions
9 of Mr. Melson at this point? And also remember, we haven't
10 heard from the rest of the, the presenters today, so obviously
11 the floor is still open. Go ahead, Commissioner Edgar.

12 COMMISSIONER EDGAR: Mr. Melson, when you first
13 started laying this out for us in your comments, right at the
14 beginning you mentioned that the final report on water
15 treatment options from the University of South Florida is, and
16 I think your words were, is due any day now.

17 MR. MELSON: Correct.

18 COMMISSIONER EDGAR: Was there a date that that
19 report was due? Is it late, is it, was it a loose time frame?
20 I would just like to be a little more clear on that.

21 MR. MELSON: It was a loose time frame. The offer of
22 settlement said that Aloha expected it to be final on
23 August 15th. I frankly think at an earlier point they had
24 expected it to be final in June, but the US, USF is going to go
25 through their, as I understand it, their own internal review

1 processes and it's ultimately final when it's final. The most
2 recent information I have is that it is expected literally
3 later this week or early next.

4 COMMISSIONER EDGAR: Thank you.

5 CHAIRMAN BAEZ: Commissioners, if there's no
6 questions, no further questions at this point, and I'm sure
7 that there may be many more, we can go ahead and --
8 Mr. Wharton, are you going to be taking the lead on this?
9 We'll hear from Mr. Wharton and his client and then Public
10 Counsel McLean and other customers that may be here.

11 MR. WHARTON: Thank you, Mr. Chairman. I'm John
12 Wharton of Rose, Sundstrom & Bentley, Tallahassee, Florida, on
13 behalf of Aloha. With me is Marty Deterding and the president
14 of Aloha, Mr. Steve Watford.

15 Commissioners, thank you for setting up the Special
16 Agenda today to consider this settlement offer. We want to
17 emphasize to you that we believe this is our chance to settle.
18 And we know that there have been a lot of statements to the
19 Commissioners and in the way the staff recommendation has been
20 laid out, and I'm sure the Commissioners in their own minds are
21 saying that these are the things that could be gained from
22 settlement and these are the things that possibly could be
23 gained from the Commission's perspective from not accepting the
24 settlement. But we urge you to accept the staff recommendation
25 so that we can move forward and establish a road map for

1 treating the water, which is at the heart of all the concerns
2 of the customers that have been expressed to the Commission.
3 And we believe that the proper way for the Commission to
4 consider their decision today is one of certainty versus
5 uncertainty.

6 There is a road map laid out now in terms of getting
7 to the point where the water is treated: That is if you accept
8 the staff recommendation. If the staff recommendation is not
9 accepted, certainly there is a considerable amount of
10 uncertainty. There is uncertainty as to who will win, there is
11 uncertainty as to the cost of the battles or who will have to
12 pay for them, there is uncertainty of in what forums those
13 cases might be brought or how long they might take. And I
14 think that it is very important to emphasize two points about
15 the time line that staff laid before you at the meeting on
16 Monday where they said, "We believe that the water could begin
17 to be treated in 2007 if the settlement is accepted, but in
18 2010 if it is not."

19 First of all, not one speaker disagreed with those
20 time frames. Secondly, we would submit that the potentiality
21 exists that if we prevail, it will be later than 2010 because
22 there is one certainty that exists, and that is something that
23 many of the customers who testified to you on Monday, even in
24 the face of some of the Chairman's express questions on the
25 points, don't appreciate: We can't possibly begin construction

1 of major plant while the deletion proceeding is pending and, in
2 fact, threatening to grow larger. We won't know what size
3 plant to design or build, we won't know who will pay for it,
4 and we won't know whether the very neighborhoods that it is
5 designed to benefit will not be part of the people who pay for
6 it or who benefit from it. So if the litigation plays out, it
7 could be beyond 2010 because whatever that point is, let's hope
8 it's sometime before 2010, when it's all over, then we're kind
9 of going to be back in this room. And maybe none of you will
10 be Commissioners, but we'll be saying now we need to go forward
11 with the treatment process and how should we do it and how
12 should we outline it and what are the prices of these
13 technologies at the present day range? So I just want to
14 emphasize that I believe one of the things that we're choosing
15 today is the uncertainty of litigation and all the things that
16 revolve around that as have been laid out to you in the staff
17 recommendation versus the certainty of moving forward now with
18 a road map, a chance for people to comment, the Commission as a
19 participant and getting these plants online.

20 I also want to mention upfront something that
21 Mr. Melson mentioned, and a few of the things that I'll address
22 Mr. Melson mentioned, and I'll try not to be redundant but I
23 think it's important for you to hear our perspective, and that
24 is the repiping program somehow took over in the minds of a lot
25 of these customers, and I don't know what they were told or

1 what they understood, maybe it was just the nature of the
2 beast, but many people seem to think it was the settlement.
3 People talked about \$11 apiece or only 200 homes. That was
4 something that the staff suggested so that some people who
5 needed immediate relief might be able to get it. And we went
6 back and forth on this amount of money in this form might cover
7 this many homes or this amount of money in this form might
8 cover a lower amount of homes. But it was something that was
9 never intended for people to perceive it as the central tenet
10 of the settlement. The central tenet of the settlement is the
11 water treatment obviously, and that seemed to be lost on a lot
12 of the customers. We will make the offer right now to amend
13 the settlement agreement or that you can put into your order
14 approving the settlement agreement that we will contribute that
15 net amount of money to CIAC on the water plant to lessen the
16 impact on rates, which we believe to be about a quarter of a
17 million dollars is what it would have cost us in interest for
18 the interest-free loans to CIAC, and to do away with the
19 repiping program. And that's something that benefits everyone
20 instead of 200 people. We definitely don't want that to get in
21 the way of what we believe is the central part of the
22 settlement.

23 We also want to emphasize, Commissioners, that we, we
24 entered into the mediation with the customers in good faith.
25 We are the ones who have said continually that the mediator,

1 Mr. Wiggins, should be free to reveal anything he wanted about
2 what occurred in that mediation. Others have invoked the
3 confidentiality of the mediation, and there is nothing wrong
4 with them doing that. That is their right. But things are
5 being cast in terms of kind of a general demonization of us
6 that there was no impasse in that mediation before we started
7 this one or that we had some kind of a hidden agenda in the
8 mediation. We entered that mediation in good faith to see if
9 we could move forward with a water treatment solution, we
10 entered the mediation with the staff in good faith, and we will
11 do what we have said in this agreement that we will do, and the
12 Commission will have the power and the authority to oversee our
13 activities in that regard.

14 There's obviously a lot of things swirling around in
15 terms of the customers' trust, and it is, it is difficult when
16 you are dealing with customers who know a lot about the part of
17 the picture they see. Really the parties who know the most
18 about the total picture are the Commissioners, the
19 Commissioners and their staff, the individuals who have been
20 working with Aloha, the Office of Public Counsel who sees the
21 big picture.

22 You heard Mr. Melson talk about what he perceived to
23 at least be the legitimacy of the refund appeal. Not only did
24 many people think we were in violation of that order, Senator
25 Fasano stood up there and said we stole the money, and that's

1 what people are hearing. And so I think that a lot of people
2 are saying you can't trust Aloha to do this or that. Aloha is
3 not in violation of any statute or rule or order. I think
4 that's something you've heard over and over again as we've gone
5 into this process. We haven't ignored your orders and we
6 intend to fulfill our obligations under this settlement
7 agreement if it is accepted by the Commission.

8 And I do want to emphasize the point I just made, and
9 that is the Commissioners are uniquely able to look at the big
10 picture. They are the ones, for instance, who understand the
11 impracticality of the county ordering us on a time line to put
12 in forced draft aeration while we are proceeding in front of
13 the Commission with the deletion proceeding. We had no choice
14 but to protest that ordinance because, first of all, we hoped
15 it would all work together and that it still may if this
16 ordinance, if this settlement agreement is accepted. And,
17 secondly, we knew that if we were under an order to begin
18 design and construction, that was not compatible with the
19 deletion proceeding and the potentiality under the deletion
20 proceeding.

21 Many of the customers talked about how they believe
22 that they will not have to pay, should not have to pay for
23 their new facilities or that they would not have to pay under
24 Pasco County. The Commissioners are experienced enough in rate
25 cases to know that that kind of an economic consideration is

1 something that drives the concerns of a lot of customers who
2 come out to customer meetings. Again, without casting
3 aspersions on how those people got that impression, both are
4 obviously false. One is it has always been true that any
5 facilities that will be constructed here, the prudent cost of
6 those facilities will go into rate base. And that is something
7 that we've wrestled with in these proceedings. The Commission
8 did a survey around 1999 where the customers said, we don't
9 want to pay, we're upset about the water quality, some of us
10 are, but we don't want to pay for any new facilities, and the
11 Commission put that in their order when they declined to order
12 Aloha to do anything at that time.

13 On the point of the county, obviously a lot of these
14 customers just believe they're going to come in, they're going
15 to have county water and it's going to be cheaper and they're
16 going to turn on the taps and everything is going to be fine.

17 First of all, the county's rate is much more
18 expensive than Aloha's presently. Secondly, the County Utility
19 Director testified in a deposition taken by your staff in June
20 that customers would pay impact fees. Customers would pay
21 impact fees if they joined, and I don't know what that is, but
22 in the sum number of the thousands, I believe, the Pasco County
23 impact fee. Thirdly, even given the economic panacea that some
24 customers believe that they will be able to attain quickly,
25 even the issue of the water is unclear. The last male speaker

1 on Monday, the next to the last speaker, the individual who
2 said that he had spent thousands and thousands of dollars and
3 that the final thing he had had to do was tear up the floors to
4 his house and that his wife was very upset about that receives
5 Pasco County water. He is in the part of our system receiving
6 Pasco County water. So once that perception gets out there, it
7 obviously tends to snowball. And that is not to say there
8 aren't people with very legitimate concerns. It's just that I
9 think that that's something the Commission, who does see big
10 picture, does understand the constitutional ramifications, has
11 seen what litigation with this much at stake can bear and the
12 costs and the way they are carried, should take into account
13 when they are making that decision.

14 We're asking you, Commissioners, to make a decision
15 today that is in the best interest of all of the customer base
16 of Aloha. If we go forward with the deletion, it is, it may
17 result, if the Commission ultimately prevails, in certain
18 neighborhoods being taken out of the service area. But then
19 that is going to make it even more difficult and even more
20 expensive not only to move forward on water quality but to
21 purchase the water from Pasco County. Economies of scale are
22 very important to utilities, and to the extent the Commission
23 goes backwards on that, it is going to affect cost and it is
24 going to affect the very people who are not the subject of the
25 deletion proceedings.

1 And staff brought up a new point today. I have
2 argued to you in the past that if the plant is constructed and
3 those neighborhoods are taken out, you will have an overbuilt
4 and overdesigned plant and a smaller customer base to pay for
5 it. You also may well have that customer base bearing the cost
6 of expenses that were incurred by Aloha during that fight. And
7 I think that the solution that is before you today in the form
8 of the settlement agreement is comprehensive in that it treats
9 all of the present customer base as the same and it allows us
10 to move right to the stage that we want to get to and that the
11 customers want to get to, and that is water treatment. And we
12 do agree with the staff very much that the most expeditious way
13 to achieve that end is to settle, and it is our desire to
14 settle these, these various things.

15 I don't want to go through and refute things that
16 were said in Monday's meeting in total, but I do think that a
17 few things need to be pointed out about things that were said
18 on Monday. And there was a lot of talk about the ad hoc
19 committee. You should all know that the ad hoc committee made
20 a finding and requested that finding be passed on to the county
21 commission, and it was, that Aloha's customer service problems
22 are the result of the black water. You fix one, you fix the
23 other. Although they're manifesting themselves in terms of
24 trust or arrogance -- people are unhappy when someone comes to
25 the house and, when you leave, you haven't fixed their water

1 quality. But obviously this is a problem that needs to be
2 addressed on a larger scale.

3 It's very important, I think, for the Commission to
4 consider that you heard from three Pasco County Commissioners
5 during this meeting, but you didn't hear any of them say they
6 would be willing to provide service if this territory were
7 deleted, and the Pasco County Commission has never said that.
8 And Mr. Kennedy in the deposition in June indicated that he was
9 unaware that the Commission had, had said that. They have not
10 indicated they would be willing to condemn any portion of Aloha
11 and they have not indicated that they have ever even
12 entertained taking back jurisdiction.

13 I think it's also important -- there was a lot of
14 talk about costs, 30 percent, 40 percent rate increases. First
15 of all, you had a county commissioner sit in front of you and
16 say that he Googled the cost of aeration while I was making a
17 presentation to the County Commission. And his efforts in that
18 regard I'm sure are genuine, but it is no way to cost
19 facilities, which is an arduous process, and in the end you are
20 the ones who determine whether it is reasonable. The
21 consultants there readily acknowledged that they had made a
22 generic estimate of the cost, that it was not specific to the
23 Aloha system, that it was subject to be increased. We maintain
24 that it did not include several things under what they were
25 proposing which would need to be done, and they basically

1 calculated rates by then dividing, I believe, what they said
2 the cost would be per customer over a 20-year period. There
3 was just no real investigation of the impact on rates. And we
4 told the County Commission, it doesn't matter what they say or
5 you say or we say, ultimately it will be the Florida Public
6 Service Commission which will decide whether we have
7 implemented what you have, are requiring us to do in the form
8 of this ordinance. But anyone who maintains that the county
9 would have any regulatory oversight over Aloha in terms of
10 economics or any jurisdiction over Aloha in terms of economics
11 either hasn't read the bill or doesn't understand the bill.
12 Even the county has not taken that position, as Mr. Melson has
13 indicated. So that is not something you will be wrestling away
14 from them.

15 On the issue of the ordinance, I think that was an
16 issue that was of some importance to the Commissioners, and I
17 understand. Aloha believed that once the ordinance was put
18 into place, that it had not followed the House Bill. At that
19 point we believe that in good faith we could litigate the
20 ordinance as to whether or not it should become final agency
21 action. However, we then made the decision should we, should
22 we -- are we better off -- is everybody better off if we just
23 let the ordinance go into place and do what it says?

24 The problem is two-fold. One is that the Act has
25 expired, and there is language in the Act about how we pass on

1 our cost for anything that the county orders us to do. Well, I
2 imagined in my mind's eye us walking in here two years from now
3 after building what that ordinance required and saying, well,
4 this bill says we can do it as a pass-through. The customers
5 who are left, if there's been a change in the customer base, or
6 the Office of Public Counsel is going to come in and say this
7 Act expired in June of 2005.

8 The other problem is the one that I have referred to,
9 and that is we knew that if we let the ordinance become final
10 agency action, we immediately had to start taking actions in
11 order to build plant that could not possibly be designed or put
12 into place without certainty regarding the future of the
13 service area and the customer base.

14 It's just very important, I think, for the
15 Commissioners to remember that the very people who told you
16 yesterday that, or on Monday rather that, yes, both things
17 should proceed simultaneously, are the very people who may well
18 not be around to pay for the plant that would be designed to
19 meet assumably the present customer base.

20 Something that I really want to say a lot for
21 Commissioner Bradley's benefit, because I know he has been
22 concerned about it, and it is a legitimate concern and it is
23 something that you heard on Monday and that you often read in
24 the editorials and et cetera, and that is that Aloha litigates
25 everything. I appreciate Mr. Melson's comments in that regard.

1 We believe we've been in a defensive posture almost exclusively
2 over the last three years. Certainly the pending of the
3 deletion in one form or another has kept us from going forward
4 with design built on the plant.

5 We have, we have -- for instance, there were five
6 things up on the PowerPoint presentation, five litigations.
7 Four of those were either initiated by the Commission or at the
8 request of the Commission, and one was a response where we sued
9 in circuit court to the deletion case. And Senator Fasano
10 stood there and said all five of these were initiated by Aloha.
11 And it's in your dockets. It's just not the case. It is just
12 not the case. We have got to defend ourselves and we will
13 defend ourselves. There are many, many millions of dollars at
14 stake if the Commission decides to proceed. And, again, we
15 would rather stop the bleeding now, stop the cost of litigation
16 now, focus our efforts on moving forward with these facilities.

17 COMMISSIONER BRADLEY: Let me respond to your comment
18 about Commissioner Bradley.

19 I'm a firm believer in the fact that a leopard can't
20 change its spots. And, you know, Mr. Melson made mention of
21 the fact that in, from your perspective right now, today, it's
22 all or nothing. Litigation is always about all or nothing.
23 And you are being litigious even today when you say that in
24 this settlement, rather than, you know, give a little, take a
25 little, that it's all or nothing, so you're not manifesting

1 anything but being litigious right now to Commissioner Bradley.
2 So proceed.

3 MR. WHARTON: And I'm sorry, Commissioner Bradley,
4 but I just don't understand your comments. I understand what
5 you're saying. I just don't agree with your comments or
6 understand your basis for them. That is a settlement.

7 COMMISSIONER BRADLEY: And my comments are about your
8 behavior, not about something that I'm guessing about. I'm
9 just -- my comment was based on your past behavior, your
10 historical behavior.

11 MR. WHARTON: But are you referring to the phrase in
12 the settlement agreement that says, "If this settlement
13 agreement is not accepted in the form that it is, then it is
14 deemed to be withdrawn"? I mean, is that what you mean by --

15 COMMISSIONER BRADLEY: No. My belief is this, and as
16 a former legislator, good public policy comes about when both
17 parties get something. Bad public policy occurs when one party
18 is happy and the other is unhappy. You all seem to be very
19 happy with the settlement. The customers seem to be very
20 unhappy with it.

21 And I'll tell you, and in this case, being a
22 monopoly, you know, the customers are boxed in. When free
23 market forces are in place, you know, the customer always
24 drives the deal. He who pays calls the tune, except in the
25 case of a monopoly. And I think that you all are overlooking

1 the fact that you have a very dissatisfied -- a segment of your
2 customers are very unhappy. And you have chosen to fight
3 rather than to negotiate with them and to, to, to establish a
4 better relationship with them only because you are a monopoly.
5 If you all were a non-monopoly and they had choice as a part of
6 their situation, they would have dropped you. So I think that
7 you're being sort of presumptuous as to what you have a right
8 to do and what your customers have a right to do. And I think
9 that you need to, you know, pay attention to what's being said
10 by the customers, you know. Because, after all, if free market
11 forces were in place, you know, the fact that the customer
12 calls the tune and they decide who pays, I mean, who serves
13 them based on who they pay would be an option. That's not an
14 option in this particular situation. I think that you all are
15 overlooking that. And you all are happy and they're unhappy,
16 which means as you talk you're even reinforcing my principle,
17 the fact that this is bad public policy.

18 MR. WHARTON: Well, Commissioner Bradley, several
19 statements you just made are just, are just wrong. First of
20 all, we dealt with the customer representatives in good faith.
21 We tried to settle this matter. We've also taken several steps
22 pursuant to an order and on our own about improving customer
23 relations. And we agree with the ad hoc committee. You're
24 going to have an unhappy customer base when you've got water
25 quality concerns.

1 But if you are taking, if you are taking -- and I
2 don't, I kind of didn't want to go here, but if you are taking
3 the comments of 23 customers on Monday out of 25,000, 15 of
4 whom are the same customers who have testified about the same
5 things again and again and again, and extrapolating that to
6 25,000 customers, then I understand why you're saying what
7 you're saying. But we have heard our customers' concerns, we
8 do believe that moving forward on improving water quality is
9 the way to address those.

10 And to the extent other -- the Dr. Duranceu, who is a
11 member of the ad hoc committee and who is someone that was
12 lauded on Monday as being a very experienced person in these
13 areas, said once the water quality is taken care of, Aloha
14 won't have any more complaints than any other utility.

15 COMMISSIONER BRADLEY: And that's true, you had 23
16 customers. But the thing that was unusual about your service,
17 your hearing is that -- and we've attended many, many, many
18 hearings across the state. Invariably there's someone who has,
19 who, who is either -- I mean, customers are usually supportive
20 or nonsupportive and there's always a mix. And I take really
21 exception to the fact that you described the fact that only 23
22 customers appeared when, you know, we had two -- we had a state
23 senator who represents hundreds of thousands of people, we had
24 a state representative who represents at least 100 and a half
25 as it relates to thousands of people, we had three county

1 commissioners. It would seem to me that, you know, the odds
2 are stacked against you in your argument as to just the 23
3 customers because these -- and you even had an elected school
4 superintendent. So I'm kind of, you're losing me when you say
5 that, that only 23 customers testified against Aloha. I mean,
6 these elected officials would not take the position that
7 they've taken if they thought that that was not what their
8 constituents so desired.

9 MR. WHARTON: And clearly with regard, clearly with
10 regard to the customers, almost all of the customers -- we're
11 not questioning the position they've taken. I'm also not
12 questioning that many speak for other people. Now the
13 politicians you mentioned --

14 COMMISSIONER BRADLEY: Elected officials.

15 MR. WHARTON: I think that if you are not accepting
16 that there are some people who are exploiting this situation
17 for their own gain, I would just suggest respectfully, sir,
18 you're missing part of the picture. And maybe you don't think
19 it is to the extent I do.

20 COMMISSIONER BRADLEY: Contrary, I think that you're
21 not accepting the fact that, that there's an uprising occurring
22 in your service territory, and you are litigating in order to
23 fight off that uprising. And at some point this boil comes to
24 a head, for lack of a better description. And, you know, when
25 you start saying that Commissioner Bradley has, you know, taken

1 the position that Aloha is litigious, I haven't taken that
2 position. That's just observable behavior on your part that I
3 described.

4 MR. WHARTON: You have made statements in past
5 proceedings --

6 COMMISSIONER BRADLEY: About observable behavior.

7 MR. WHARTON: Well, about your perception of it.

8 COMMISSIONER BRADLEY: No. About observable
9 behavior. I have no perception.

10 MR. WHARTON: Well, let me ask you, Commissioner
11 Bradley --

12 COMMISSIONER BRADLEY: Don't ask me any questions.
13 I'm just hear to listen.

14 MR. WHARTON: Okay. Well, I understand your point,
15 sir, and respectfully disagree.

16 COMMISSIONER BRADLEY: You have that right.

17 MR. WHARTON: I do believe, I do believe that here in
18 your files -- you could easily have your staff compile
19 something about, say, the last 15 administrative proceedings
20 Aloha has been involved in and who actually initiated them. We
21 cannot lay down arms and to negotiate while simultaneously
22 fighting for our lives in a deletion proceeding. That's why
23 today's opportunity is so valuable.

24 COMMISSIONER BRADLEY: This has been going on for ten
25 years. The deletion proceeding has been only in process for a

1 few months. Ten years, a few months.

2 MR. WHARTON: Well, three years. The deletion
3 proceeding --

4 COMMISSIONER BRADLEY: Okay. No, the customers have
5 been talking about black water for the last -- how many years,
6 how many years have the customers been talking about black
7 water?

8 MR. WHARTON: The black water was first mentioned, I
9 believe, in the Commission's '98 order. The Commission issued
10 an order a year after that that said, that said they were not
11 going to order us to do anything because they could not
12 determine the, the extent of the problem or how widespread it
13 was, and they ordered us to engage in a pilot program, which we
14 did. We complied with that order.

15 So if you've read the five major orders that have
16 been issued on Aloha since '97, the concerns have been
17 quantified and perhaps have grown since then, but it is not as
18 simple as, as your staff said in the December 22 primary staff
19 recommendation, that we have done nothing. And there's a
20 mantra among some that we won't do anything unless you order us
21 to do it. And ever since this settlement came out, it's that,
22 well, we shouldn't have to pay for it. I mean, that is -- we
23 have said repeatedly that if we could get into this position,
24 we'd move forward with the facilities. That's why were hoping
25 to come out of today in --

1 COMMISSIONER BRADLEY: Let me ask this question.
2 Every order that this Commission has, has put forth you all
3 have contested it through -- what process is it?

4 MR. WHARTON: Well, you would -- it depends on the
5 type of the order.

6 COMMISSIONER BRADLEY: But what have you all done in
7 order to contest every order that this Commission has put
8 forth?

9 MR. WHARTON: There -- I'm sure the Commission has
10 issued some orders with regard to us which we did not contest.
11 For instance, the hearing that we had --

12 COMMISSIONER BRADLEY: But what process, what process
13 have you used to contest?

14 MR. WHARTON: Well, you would ask for an appeal at
15 the First District Court of Appeals is how you would appeal a
16 Commission order.

17 COMMISSIONER BRADLEY: So how do we know that at some
18 point if you disagree with what we are doing today that you're
19 not going to protest or appeal this particular order, even
20 though you say that you're not going to?

21 MR. WHARTON: I don't believe that we will -- that
22 there is an issue of appealing today's decision. But the
23 ultimate decision in the deletion case would be something that
24 I would imagine Aloha would exhaust its opportunities if the
25 order were adverse to Aloha.

1 COMMISSIONER BRADLEY: And let me clearly state this.
2 I'm not interested in deletion. I'm only interested in the
3 customers having clear water that's acceptable. I'm not
4 interested in deletion. I'm only interested in you selling a
5 product that's acceptable.

6 MR. WHARTON: And that's why we really believe that
7 the quickest way to get to that point is to accept the
8 settlement agreement.

9 COMMISSIONER BRADLEY: But you're happy and the
10 customer is unhappy, which means that it just -- it doesn't
11 meet the smell test or the litmus test that I use to determine
12 if this is good public policy or not.

13 MR. WHARTON: And I really think, sir, when you've
14 got newspaper editorials like today that can't get it right,
15 that are filled with misfacts, when you've got politicians who
16 say we deliver, we deliver filthy, dirty water, which has been
17 said under oath twice to you by the Senator, when you've got
18 people saying we stole their money and that's what gets on the
19 news, if you're going to make your decision based on the
20 indication of the people who, and that atmosphere who come out
21 to the hearings, then you're, you're just not going to vote for
22 a settlement like is before you today, and I understand that.
23 But I just -- what I'm trying to urge to the Commission is that
24 there are many things that should be considered to benefit all
25 the service area.

1 COMMISSIONER BRADLEY: I'll tell you what would make
2 this more palatable. If you took the position that you're
3 willing to, to engage the customers, engage the Commission
4 staff, engage the county and sit down and come up with, with,
5 you know, either a mediated, maybe an arbitrated, going to
6 arbitration rather than mediation, then that would indicate to
7 me that, that you, you really are being something less than
8 litigious or you're being --

9 MR. WHARTON: That's, that's exactly what we tried to
10 do in the mediation with the customers. We would be more than
11 willing for Mr. Wiggins to reveal everything that went on in
12 those mediations. And that is what we've tried to do in the
13 negotiations with your staff that resulted in this agreement is
14 say let's come up with a scientific way that everyone can come
15 and weigh in on on the best way to treat the water. Let's lay
16 out some time lines and the way it can be accomplished. Let's
17 stop all this other activity that detracts from that and let's
18 move forward in that regard.

19 CHAIRMAN BAEZ: Mr. Wharton, are you finished with
20 your comments, sir?

21 MR. WHARTON: Just very quickly, Commissioners, we
22 would, we would ask that you approve the settlement agreement.
23 We believe that it does provide the type of certainty that
24 would benefit all of the customer base. I think that the
25 current litigation is one that involves risks for both Aloha

1 and for the customers because it may well delay a solution and
2 to no good end.

3 The proceeding is unprecedented, and I think whenever
4 you are -- and we have not violated any rules, orders or
5 statutes. Your counsel told you on Monday, if they then
6 violated the order you issued on this, we'd have a better case.
7 And what he was saying is you're taking one of the hardest
8 stances that we're aware of that any regulatory commission has
9 ever taken against a utility in the United States, and you've
10 done so without any violation of any rule, order or statute.
11 We certainly perhaps have not expressed our degree of
12 unhappiness to the extent we should with the settlement. We
13 felt like we gave a lot and that it is going to entail us
14 giving up other things. But we, we see the litigation as a
15 risky proposition and took that into consideration when we
16 entered into the settlement agreement. And I think that it is
17 fair for the Commission to at least consider the risks and the
18 ultimate outcome of the litigation when deciding whether to
19 accept the staff recommendation.

20 CHAIRMAN BAEZ: Thank you, Mr. Wharton.

21 Mr. McLean.

22 MR. McLEAN: Yes, sir. Good morning, Mr. Chairman,
23 Commissioners, it's a pleasure to appear before you as always.

24 I want to preface my remarks with something that just
25 came up while it's fresh on my mind. Mr. Bradley, you are not

1 wrong, sir. Mr. Wharton says you're wrong. No, sir. You are
2 spot on. He says you don't see the whole picture. No, sir.
3 You see the whole picture better than anybody in this room in
4 my opinion. You have seized, you have seized the thrust of
5 this proceeding better than anyone else has.

6 And let me also address this. I heard Mr. Wharton
7 say that the black water arose in '97. No, sir. In 1995 we
8 put about 200 gallons of that filthy crap on the table in a
9 Commission hearing. I believe Commissioner Deason was
10 personally present. So, no, not 1997. 1995. And for -- and
11 the debate at that time was how many years before 1995 this
12 problem was apparent.

13 Mr. Bradley, you seized the matter perfectly, and I
14 thank you. You've stolen a little bit of my thunder in the
15 process, of course, but you have it exactly. You're not wrong.
16 These customers were not snowballed into a misapprehension by
17 their leaders. Reject that. You must reject that out of hand.
18 That is the kernel, the tone of this argument which you have
19 heard today is the kernel of what's wrong with Aloha: Open
20 contempt for their customers and open contempt for this
21 process. They have never missed an opportunity not to defend
22 but to attack this process.

23 I submit to you this is the only utility in the
24 state, maybe the country, who ever had the abject audacity to
25 challenge your right to audit. They challenged your right to

1 audit a pervasively regulated utility and, of course, they
2 lost, as they normally do.

3 The notion that they only defend is hogwash. They
4 are in there with a sword as often as possible, and they poke
5 it in some mighty bizarre places, if you ask me.

6 As I said, I'm Public Counsel, State of Florida.
7 With me this morning is Steve Reilly, Associate Public Counsel,
8 and there are two gentlemen who are observing from Attorney
9 General Charlie Crist's office. I think they want to make an
10 appearance later. Also, Mr. Chairman, I believe, I'm also
11 advised that two, at least two customers would like to address
12 you.

13 As you've probably gathered, the OPC will not support
14 the settlement this morning, and I wish to offer a few remarks
15 of explanation. OPC has been on hand in several capacities
16 over the past decade as polarization and animosity between
17 Aloha and its customers have reached epic proportions. Over
18 the past year or so the regulatory process has had to deal with
19 two extreme positions. The utility steadfastly maintains that
20 it meets all state and federal standards for drinking water.
21 On the other hand, customer dissatisfaction with Aloha has
22 become so extreme that many customers now demand that their
23 homes be excluded from Aloha's certificated territory. Two
24 extremes, Commissioners, that quite a number of
25 good-intentioned and skillful players have judged to be

1 irreconcilable.

2 It is to the great credit of your staff, and
3 particularly the credit of your General Counsel, Rick Melson,
4 that staff ventured forth against all odds and obtained several
5 material concessions from Aloha. Even the most casual observer
6 of this process has to give credit where credit is due. Staff
7 and only staff led by Mr. Melson has been able to envision and
8 blaze the trail between these two otherwise irreconcilable
9 extremes. Your staff, Commissioners, has once again served you
10 very well.

11 It is indeed very inviting to follow your staff down
12 the path they suggest. Commissioners, compromise is laudable
13 and, of course, OPC generally supports compromise in lieu of
14 litigation. So it is with some remorse that we decline to
15 support this settlement.

16 However, the customers of Aloha have suffered through
17 at least a decade of what they believe is unacceptable water.
18 The customers have suffered through at least a decade of what
19 they believe to be arrogant, surly, condescending, which you
20 heard in spades this morning, contemptuous, high-handed and
21 generally unacceptable treatment from Aloha, its management,
22 consultants and many employees.

23 The customers are fully conversant with the terms of
24 the recommended settlement and, as you heard the day before
25 yesterday, they want no part of it. As you also heard, they do

1 not trust Aloha to live by the provisions. They expect Aloha
2 will follow the well-worn course of instant knee-jerk,
3 recalcitrant litigation at every turn.

4 Commissioners, your courageous staff has crafted a
5 compromise, but customers, having been disappointed by delay,
6 broken promises and endless litigation, are much more inclined
7 to characterize this settlement as nothing more than
8 appeasement. They want Aloha out of their lives forever.

9 There has been an occasional talk of taking in this
10 case, a taking in a constitutional sense. It has taken the
11 form of a threat from Aloha travelling in the cloak of a plea
12 that the Commission must not take away Aloha's business.

13 The overriding mandate of the regulatory process is
14 to bring the dynamics of a free marketplace, as Mr. Bradley
15 observed this morning, to the aid of the captive customers of a
16 monopoly provider of necessary services. Where customer choice
17 can't set prices, you Commissioners do. Where customer choice
18 can't set terms of service, you Commissioners do. Where
19 customer choice can't control cost of production, you do.
20 Where customer choice does not set a fair profit for the
21 enterprise, you do.

22 Which of us has recently shopped at Montgomery Wards?
23 Which of us has recently bought a new Hudson? Myself excluded,
24 of course. Which of us has booked a flight on Air Florida?
25 Remember Woolco, TG&Y, W. T. Grant?

1 The point is there's nothing in the free marketplace,
2 in the dynamics of a free marketplace that guarantee
3 immortality to any firm. It is a sink or swim environment.
4 Firms in the free marketplace sink for all manner of reasons,
5 but customer dissatisfaction with the product and service is
6 the most compelling of the lot. There is absolutely nothing in
7 the regulatory compact that guarantees that a regulated firm
8 must not fail. You are not the guarantors of Aloha, you're its
9 regulators. You have no business withholding your authority
10 where it is needed. You must give full effect the abject
11 dissatisfaction with Aloha's product and its services that
12 Aloha's customers have made known to all of us for more than
13 ten years. Customers of Montgomery Ward, TG&Y and Air Florida
14 were free to vote with their feet, as the saying goes. Aloha
15 customers are not free to walk away. This Commission is their
16 only hope for relief.

17 The Commission itself has a dog in this hunt. I
18 haven't run the numbers, but I appeal to your intuition to
19 consider that Aloha is by far the most expensive utility you
20 regulate on a per customer basis. Even Florida Power & Light
21 with its several petitions for half a billion dollars here and
22 half a billion dollars there this year doesn't bring the
23 chronic frustration and squander of public resources to your
24 door. These customers know all too well that deletion and its
25 consequences lead directly to a legal thicket of difficulties.

1 It is not a pretty picture, it's a high price to pay, but, as
2 you heard on Monday, it is one which customers regard as
3 cheaper than a continued relationship with Aloha.

4 The settlement has its good points and there was
5 noble, laudable effort in its making, but it is not good enough
6 for these captive customers because it's not what they want.
7 They want rid of Aloha forever.

8 On Monday these customers were presented with a
9 purported compromise and they rejected it. It is that eloquent
10 simplicity, it is that eloquent simple fact that forbids OPC
11 from supporting the settlement, and I submit that it should
12 forbid you too. Thank you for your attention.

13 CHAIRMAN BAEZ: Questions of Mr. McLean?

14 Mr. McLean, you said you had -- and I don't know what
15 order you would suggest my taking it, but if your clients --

16 MR. McLEAN: Commissioners, I believe it would be
17 appropriate for the two gentlemen from Charlie Crist's office
18 to identify themselves.

19 CHAIRMAN BAEZ: Oh, very well. The Attorney's
20 General's Office.

21 MR. McKEE: Mr. Chairman, thank you. I'm Jim McKee,
22 with me here is Steven Gold, appearing on behalf of the
23 Attorney General for Jack Shreve who couldn't be here today.
24 The Attorney General agrees with the position of the OPC.

25 CHAIRMAN BAEZ: Thank you, Mr. McKee. And,

1 Mr. McLean, you had a couple of your clients that wanted to
2 speak?

3 MR. McLEAN: Commissioners, Mr. Chairman and
4 Commissioners, Mr. Wayne Forehand.

5 MR. FOREHAND: Thank you, Harold.

6 I tell you, after hearing Attorney McLean, he's
7 dynamic. I'm just a customer. I've lived with this problem
8 down here for well over ten years now. What I'm talking about
9 is the bad water. You've seen it, you know it's there. The
10 arrogance of management, it's unbelievable. We tried very hard
11 to work with them over the years and they don't want to listen.
12 They sit in their office and just -- they don't manage the
13 outfit. Over the last ten years of this bad management --
14 they've got a poorly trained staff, they don't do the job. You
15 just won't believe the problems that are out there. You heard
16 a lot of them from a lot of customers yesterday.

17 Mr. Wharton sat here and tried to paint a very nice
18 picture of how "we work with the customers." Mr. Bradley
19 caught on very quickly and very clearly explained what
20 Mr. Wharton was doing. That's what he normally does. He
21 normally has that same approach. Mr. Watford's approach is
22 even worse. They don't care about the customers. A company
23 that wants to be in business has to take care of their
24 customers. This is a known fact.

25 I'm not going to say a whole lot more. All I can

1 tell you is that the settlement isn't going to be the answer
2 because Aloha is still here, and we can't live with these
3 people. They've had ten years to fix this problem. And now
4 they're saying if you don't take the settlement, we're not
5 going to fix the problem. And we want the Commissioners to
6 understand that we need some help and not to accept the
7 settlement.

8 MR. HAWCROFT: Good morning, Commissioners. My name
9 is Harry Hawcroft, and I'd like to just make a few comments.

10 First, I'd like to thank Mr. Melson and his staff.
11 Regardless of my, my views in opposition to the, to their
12 resolution to settle, I think that they did a, a tremendous
13 job. It was a daunting task. Because, as Mr. Wharton
14 mentioned, there was meetings -- I call them meetings with the
15 customers because in actual fact, as you legal people know, the
16 customers cannot mediate with Aloha Utilities because, if I'm
17 not mistaken, this case is Public Service Commission versus
18 Aloha Utilities. So I don't think that a third party can be
19 considered a mediator. But in those talks the customers
20 really, with the help of Mr. Wiggins, which I must give high
21 recommendations to him, put out a matrix of options and
22 solutions that might get to the crux of the matter and solve
23 the situation. It ended up in the last meeting that we
24 attended -- and I have to say this, the, the meetings were, I
25 thought, on the customers' part constructive, and I thought for

1 a short period of time that I saw a different side of
2 Mr. Wharton. Now whether it was that he was playing
3 good guy/bad guy, I saw a side that I thought gave us some
4 optimism that we could maybe find a solution. But there was
5 many key elements that were absent. And, Commissioner Bradley,
6 I do believe, just a short while ago hit home with the root
7 problem with that particular mediation, and unfortunately it
8 carries over into Mr. Melson's effort.

9 And I think Commissioner Bradley is on the right
10 track. I do believe that if all of the interested parties, and
11 I'm talking like SWFWMD and maybe possibly Tampa Bay, because
12 Aloha eventually is going to have to get additional water from
13 Tampa Bay because their water supplies are diminishing as we
14 sit here -- I think that committee task force, however you
15 would deem to label it or call it, would really be a functional
16 way to solve this.

17 And the customers really are asking for two simple
18 things: Number one, they're asking for a solution to their
19 black water problem. Number two, they want the solution to be
20 a cost-effective resolution. And it is no more than any
21 consumer would ask. For example, if I would go to a Chevrolet
22 dealership and say today, I would like to buy a car, if the
23 salesman said to me, I want you to agree to A or to give me a
24 blank check before I would even put out any options or any
25 description to the car that I wished to purchase, I, as a

1 customer, would say, I'm not going to do that.

2 In essence, with all due respect to the future cost
3 of fixing this -- and let's face it, there is going to be a
4 solution. There is going to be a process because I know you as
5 the, under your police powers and the statute, 367, are not
6 going to allow the customers to, this to carry on another ten
7 years. Now we're talking litigation into the high 2000s. But
8 in reality the customers want this thing resolved. But the
9 criteria that -- when I speak to anyone, they say, "When can I
10 have water in my living room and leave it there where it won't
11 kill my goldfish?" Number two, "When can," like the one lady
12 at the one hearing, "When can I bathe my baby in clean water?"
13 And then number three, "What will this eventually cost me?"
14 And this is going to take a process to fix this. It is also
15 going to take an education program to educate the customers
16 exactly what has been done, what is going to be done and more
17 so how much will it impact their monthly water bill? And
18 that's the main things that people ask.

19 I think any, anything that you can decide today that
20 could maybe work in the framework of Commissioner Bradley's
21 idea that involves all parties -- if Aloha is coming forth with
22 this goodwill offer, yes, maybe we should go back again. But
23 with -- we cannot talk about what SWFWMD would do or Tampa Bay
24 would do or the county unless all of those actors are there.

25 This reminds me a lot of -- sometimes my

1 granddaughter will con me into playing a game, and she likes to
2 play Monopoly. But when you set out the houses on the game
3 board, she doesn't want me to set the, know the prices. And
4 if, if I'm going to stop at one of her hotels or wherever, she
5 likes to set the price afterwards. And this is somewhat like I
6 feel today that we're, that the customers are going to be asked
7 to be in a Monopoly game and there are no real rules of the
8 road as far as cost. Yeah, we can come back and once again
9 litigate and fight that we disagree with the, whatever the fix
10 is to solve this. But couldn't all this be done before and
11 say, look, people, the Parsons Company took an off-the-shelf
12 solution, a standard engineering fix that is available to, to
13 all communities? In fact, they made reference to one tray
14 aeration system, Dr. Chaplin did, that's on I-75 in Georgia.
15 And as a matter of fact, when we were travelling that way up to
16 Illinois just recently I took a look at it. The state of
17 Georgia bought that unit off the shelf and it was installed.
18 You can buy those units or whatever the process and there's a
19 standard price. Cripes, you're only talking they're going to
20 process two to three million gallons a day. I mean, it does
21 not take years and years of, of economical study to figure what
22 things will cost. So finally, I would like to say that would
23 be my idea in this case.

24 And, finally, I would like to say something about a,
25 a senator who previously was a state representative. The

1 reason Senator Fasano can comment freely and proficiently about
2 the quality of the water that is served to the customers is
3 because, first-hand, he resides in the utility area. So I
4 think that that gives him the, we'll call it the expert status.
5 He can make comments on that.

6 So without further to-do, I wish to thank the
7 Commission for your, your excellent presence on Monday. It was
8 a long day and the customers appreciate that, I do, and I think
9 it was a job well done there. So thank you.

10 CHAIRMAN BAEZ: Mr. Hawcroft.

11 MR. HAWCROFT: Yes.

12 CHAIRMAN BAEZ: Before you go I wanted to ask you a
13 question. I heard, I heard what you said. I want to thank you
14 for your comments. I think they're probably the most
15 considered comments I've heard from a customer in all of this,
16 this long history that we've had on these and so many other
17 matters.

18 MR. HAWCROFT: Thank you.

19 CHAIRMAN BAEZ: So I thank you for that, sir. One of
20 the things that I didn't hear in your comments -- first I have
21 a question. Do you, do you feel that or do you recognize that
22 part of the process that you talk about in terms of what's a
23 good, what's a proper costing for, for a certain alternative,
24 you mentioned the tray aeration that, that you visited or
25 witnessed, do you feel that the after process that the

1 settlement proposal creates, that proceeding in which the
2 Commission would sit and say this is the most cost-effective
3 alternative, this is not the most cost-effective alternative,
4 do you, do you believe that the settlement, the settlement
5 offer that we're considering allows for that kind of
6 conversation that you enacted for us to take place?

7 MR. HAWCROFT: I think the, the customers might well
8 have agreed to or supported a settlement that would have had
9 the cost factors upfront. Like, for example, I gave you the,
10 the sheets on the, on the Parsons analysis, which I have to
11 admit -- and it tells you right in there that this was based on
12 their information, what was available at the time, and the lack
13 of information thereof from Aloha Utilities. The Parsons
14 Company and the ad hoc committee did request the site maps that
15 would give them a better cost.

16 But back to your question, do I -- could I support a
17 settlement that does not have any figures that are added to it?
18 I don't think I could because as a negotiated or as an
19 interested party that is the first thing that customers ask me.

20 CHAIRMAN BAEZ: And I would -- and I agree with you
21 on that. I, I couldn't support a settlement, if, if it was a
22 settlement that purported to, to be, in other words, used the
23 word "comprehensive," and perhaps that's not an accurate word
24 to use in this case, but if it was a settlement that purported
25 to be that definitive, I would agree with you that I couldn't

1 support something that didn't have any numbers before us. But
2 is it -- so I would ask you this, is it your belief that our
3 consideration of this settlement is, is definitive in that
4 respect; that we are, in fact, consigning the customers in any
5 way to pay any cost whatsoever without knowing them? I mean,
6 do you believe -- are you interpreting the settlement to
7 actually have that effect?

8 MR. HAWCROFT: The way it appears to me, the way I,
9 the way I read it is that there are no, there's no cost
10 analysis upfront, like I said.

11 CHAIRMAN BAEZ: I think that's as much a, that's as
12 much a function of the timing of it as anything else. I mean,
13 you realize that we would have to go through a hearing process
14 of some sort or some kind of analysis from our end to say
15 that's better than this one and this one is better than that
16 one and kind of choose. I mean, I couldn't do it any other
17 way.

18 MR. HAWCROFT: I would agree that there's obviously a
19 time element to fix this.

20 CHAIRMAN BAEZ: Okay.

21 MR. HAWCROFT: And there's an urgency, believe you
22 me, and an interest for urgency on the part of the customers.
23 But it seems like that urgency suddenly is -- it took over ten
24 years for that urgency to develop.

25 The customers gave the utility the right to look at

1 options almost three years ago. It was out of the frustration
2 of no action and no water quality improvement that they could
3 see that finally the question of petition for deletion came up.
4 The petition for deletion, the mechanics of that, it was about
5 a five-day process, believe you me. In five days that first
6 petition, I believe, was 1,400 names. That was the period of
7 time for the filing. And then beyond that there were more
8 people wanted to sign on but we, but we, we said, look, we
9 cannot go out and canvass to all of the different subdivisions
10 and areas. It was just the people that -- that was it.

11 CHAIRMAN BAEZ: I also find it curious that in all of
12 your comments you never uttered the phrase "We want Aloha out."
13 And maybe I'm -- and I don't mean to take words out of your
14 mouth rather than put them in your mouth, but, you know, I
15 never heard you, I never heard you say that. I heard you try
16 to analyze what the shortcomings of the settlement were, but
17 not in the context of we don't, we don't want service from
18 Aloha specifically. And I don't mean to put the question
19 before you, but I just observed that you never said it. What
20 do you --

21 MR. HAWCROFT: The thing I would say to that, each
22 person brings a different perspective, point of view. And I
23 have said this to Mr. Wharton and all of the people that were
24 present from their company. This was just me saying it and I
25 said it the same way. It is -- my participation was not to be

1 a party of trying to put them out of business. I say this, I
2 don't need to say that because they're effectively doing that
3 themselves. It's not necessary for me to, to say that. They
4 are really the people who are adding to the mounting deletion,
5 we'll call it the threat or the option. So it's not my purpose
6 to say what is the obvious. My purpose was to look at the
7 cost, look at some of the solutions, and that was my
8 participation in the, in all of these different committees.

9 CHAIRMAN BAEZ: And I'm glad you did participate. I
10 have one last question for you.

11 MR. HAWCROFT: Yes.

12 CHAIRMAN BAEZ: The suggestion was made by
13 Mr. Wharton that -- and perhaps I wouldn't adopt his certainty,
14 the certainty with which he said it, but do you, do you agree
15 somewhat with the statement that he made that if the black
16 water problem, if the water quality problem were, were
17 corrected, if it were, if it were remedied, then, then the
18 customer complaint or the customer satisfaction or complaints
19 about the utility in particular would, would be less or would
20 go away all together?

21 MR. HAWCROFT: I will answer yes, but let me explain
22 the yes.

23 CHAIRMAN BAEZ: Please.

24 MR. HAWCROFT: You're right in one respect,
25 Commissioner Baez. Yes, the -- if the black water situation

1 was corrected -- and the technology is simple to correct it.
2 The utility knows it. We don't need an exhaustive study from
3 the University of South Florida to tell the customers who have
4 spent the past three and a half years studying this. The
5 customers know what it's going to take to resolve this.

6 But back to your question, part of the customer
7 complaints would go away, I am sure. But a lot of the customer
8 service still needs to be tuned up. So for you to say
9 everything is going to go away is -- I would have to say no to
10 that.

11 CHAIRMAN BAEZ: Oh, I'm not, I'm not suggesting in
12 any way that it would all go away. I asked you if you agree
13 with the statement that was made.

14 MR. HAWCROFT: I think a majority would. But it is
15 going to take, like I said, the two requirements the customers
16 ask. That is, to, number one, resolve or, like Commissioner
17 Bradley said at the Agenda Conference previously, fix the black
18 water problem, but yet do it as cost-effective. Remember, the
19 customers have to pay for the resolution of this. The
20 customers, if they're educated and not scared away with the
21 398 percent increase -- that is the thing that killed this, I
22 do think, in '97 and '98. But I do really like Commissioner
23 Bradley's idea about a task force. If I could say anything,
24 whatever the format would be, to hold your decision in abeyance
25 and structure something along Commissioner Bradley's idea. I

1 think his insight into this has always been -- is one of the
2 pathways to solve this. Because you have got so many
3 governmental agencies here that have been working not for a
4 common goal, and I think that that could resolve it. So if
5 that's all, thank you.

6 CHAIRMAN BAEZ: Thank you, sir.

7 Commissioners, do you have any questions of
8 Mr. Hawcroft? Commissioner Deason.

9 COMMISSIONER DEASON: No. I have a question for
10 Mr. McLean.

11 CHAIRMAN BAEZ: Oh, okay.

12 COMMISSIONER DEASON: We kind of skipped over a
13 little bit.

14 CHAIRMAN BAEZ: Yeah. We let Mr. McLean off too
15 easy.

16 COMMISSIONER EDGAR: Mr. Chairman, I'm sorry, I have
17 some questions that I'm going to want to get into. At some
18 point could we take a five-minute break?

19 CHAIRMAN BAEZ: Oh, yeah. Let's let Mr. McLean -- is
20 it a short question?

21 COMMISSIONER DEASON: It depends on his answer, I
22 suppose.

23 MR. McLEAN: I'll try.

24 CHAIRMAN BAEZ: I don't know why I asked you that.
25 Your questions are always so terse and to the point, and it's

1 really the answer that's the problem.

2 MR. HAWCROFT: Thank you.

3 CHAIRMAN BAEZ: Thank you, Mr. Hawcroft.

4 COMMISSIONER DEASON: Do you want to break now or do
5 you want me to ask my question?

6 CHAIRMAN BAEZ: Why don't we -- Mr. McLean, why don't
7 you -- we'll leave you in anticipation and worrying about what
8 the question is going to be. And let's break for five minutes.

9 MR. McLEAN: Good idea. And let me -- if you have
10 detailed questions about the settlement, Mr. Reilly is your
11 man. Policy, I'll be happy to do what I can. Thank you, sir.

12 CHAIRMAN BAEZ: We'll recess for five minutes.

13 (Recess taken.)

14

15 (Recess.)

16 CHAIRMAN BAEZ: We'll go back on the record. And as
17 I recall, Public Counsel McLean was on deck and, Commissioner
18 Deason, you were throwing the ball.

19 COMMISSIONER DEASON: Well, just let me say, first of
20 all, I rarely disagree with Mr. McLean, and he is probably
21 right that the first time black water came up was in 1995, but
22 I was not there.

23 MR. McLEAN: We have been so many places,
24 Commissioner, I thought maybe it was you, too.

25 COMMISSIONER DEASON: In fact, I think my first

1 exposure to the black water question was, of all things, I was
2 assigned to the reconsideration case of the rate proceeding.
3 And the reason for that was we had such attrition at the
4 Commission of Commissioners that I was one of the few around
5 that was even on the Commission when the rate case was first
6 heard.

7 And maybe that's a signal, Commissioners, that if you
8 get assigned to an Aloha case, you leave the Commission shortly
9 thereafter. So maybe I wouldn't have been on the Commission as
10 long, if I had been on that original case. But, nevertheless,
11 I do have a question for Mr. McLean.

12 It was said earlier today, I think by Mr. Melson, and
13 I think repeated by Mr. Wharton, and I wanted your input on it
14 as well. And it is the question of if the deletion proceeding
15 continues, that is, if the settlement is rejected, the deletion
16 proceeding continues, that there is uncertainty as to the
17 outcome of that, and that there is a burden that rests with the
18 Commission in prosecuting that case. And who knows how that
19 would turn out.

20 And if there was a decision by the Commission to
21 delete territory, that most certainly would be appealed, and
22 then who knows how the court is going to interpret that. So
23 there is a great deal of uncertainty both in terms of outcome,
24 in terms of cost, and in terms of the time involved in going
25 through that process.

1 Do you agree with those assessments?

2 MR. McLEAN: Absolutely.

3 COMMISSIONER DEASON: You do agree with that?

4 MR. McLEAN: Yes, sir.

5 COMMISSIONER DEASON: Then how do you view that in
6 terms of why the settlement should be rejected?

7 MR. McLEAN: You know, it's a very simple answer. I
8 think the people that I have the honor to represent have
9 weighed those two eventualities. One, the settlement on the
10 one hand, which the Commission was kind enough to give them a
11 good view with Mr. Melson's help of the various provisions of
12 the settlement. The people that I represent weigh that on the
13 one hand against the continuing uncertainty, the legal thicket
14 through which they have to navigate, and they have made the
15 decision that it is more advantageous for them to get rid of
16 Aloha than it is to take on the settlement. It's elegantly
17 simple.

18 They know that there is a cost on both sides of the
19 scale; they know that there are benefits on both sides of the
20 scale. And what I glean from their the public testimony over a
21 long period of time is they are tired of Aloha. They are tired
22 of that condescension that you heard this morning. That
23 attitude -- I don't want to editorialize too greatly, but that
24 attitude is what this case is about. They are tired of that.

25 And I believe you can back any creature into a corner

1 so badly that they finally say I'm getting out of here no
2 matter the cost. And that is what I glean that the customers
3 are saying.

4 COMMISSIONER DEASON: Let me ask a follow-up. And I
5 understand that you and Mr. Reilly, maybe others on your staff
6 have worked closely with the customers, and I want to
7 congratulate you for that, and I think they certainly
8 appreciate that assistance. So you have had the ability to
9 communicate with the customers. Is it your impression and Mr.
10 Reilly's impression that the customers understand, though, that
11 while it is their adamant position that there is enough
12 evidence in the deletion proceeding to delete territory, that
13 there are certain legal requirements this Commission has to
14 meet before we do that, and then whatever action we take is
15 going to be reviewed by a court and there is no certainty in
16 that process whatsoever?

17 MR. McLEAN: Commissioner, the answer is yes. Both
18 Mr. Reilly and I, and Mr. Beck before Mr. Reilly, have advised
19 the customers, I think, fully in the premises. They know what
20 the costs are, they know what the risks are, they know the
21 legal landscape in which this Commission has to function. And
22 I have to tell you that as I said in my presentation, there are
23 aspects of this settlement which are attractive.

24 Nonetheless, isn't what these customers want -- I
25 will not join Aloha in the general notion that these customers

1 are ill-advised, and that they are ill-inclined, and that there
2 has been some sort of snow-balling effect that brings to the
3 table some convoluted understanding of the case. I believe
4 that the customers who I represent know this case well, they
5 have known it for years, and they know what the risks are.

6 I have personally advised the customers over time
7 that the deletion route will probably bring about five more
8 years of litigation, if not ten. But I also have to agree with
9 the customers that we have made, we, as a regulatory process --
10 and as you know I have had several hats on during that time --
11 we, as a regulatory process, have made utterly no progress
12 since 1995 that I know of, with the sole exception of this
13 settlement. And it isn't enough progress to dissuade these
14 customers from seeking deletion. I mean, it's as simple as
15 that.

16 They do not want the settlement. They want deletion.
17 That is good enough for me. It is a reasoned choice that I
18 believe they have made, and you have been exposed to any number
19 of customer meetings where you saw the regard that they have
20 for Aloha. They want shed of Aloha forever, in my judgment.

21 And as I argued in my presentation, there is nothing
22 special about the regulatory environment that should isolate a
23 firm from the displeasure of its customers. And that is what
24 we are facing here. And I will even go out on a limb to say
25 that I believe that their displeasure with Aloha is extremely

1 well-founded. But even if it wasn't, why should the regulatory
2 process isolate that firm from their displeasure. That does
3 not happen in the free marketplace. It doesn't happen in the
4 free marketplace, and it really shouldn't happen here. You are
5 not the guarantors.

6 COMMISSIONER DEASON: Let me follow up on that one.

7 CHAIRMAN BAEZ: Yes.

8 COMMISSIONER DEASON: I agree, the fact that -- and I
9 think you even said that there is no immortality in the free
10 marketplace, and obviously there is not. But you do agree,
11 though, that for the provision of such an essential service as
12 water to customers, that if one entity ceases to provide
13 service, someone has got to be there ready and able to step in
14 the very next moment so there is not a period that customers go
15 without service, correct?

16 MR. McLEAN: Yes, sir.

17 COMMISSIONER DEASON: And I think it is contemplated
18 by the customers that that is going to be the county.

19 MR. McLEAN: Yes, sir.

20 COMMISSIONER DEASON: And I don't second-guess the
21 customers' feeling that that is going to be, but you would
22 agree that this Commission has to have an assurance and a
23 specific plan in place to make sure that that takes place. You
24 would agree with that, would you not?

25 MR. McLEAN: Not entirely.

1 COMMISSIONER DEASON: Okay. Can you explain?

2 MR. McLEAN: But I understand your rationale, and I
3 do share a great deal of it. Because when you get right down
4 to the details, on the morning that there is a deletion, who
5 provides service? My view is that a circuit court would forbid
6 Aloha, this Commission, or anyone else from terminating service
7 at that point in time. A circuit judge would probably give a
8 length of time to get the pot right on who is going to provide
9 the service and so forth, and this Commission could be a
10 petitioner before that circuit court to ensure that happens.

11 But I share your frustration. And I have advised the
12 customers that the path of deletion is an incredibly complex
13 one. The issue remains, who owns the pipes, who owns the
14 meters, who owns all of that stuff. I think there are some
15 colorable arguments to be made that the customers have an
16 equity position in it because of their contributions. But that
17 is highly controversial and would take years to litigate.

18 I guess I think if we let -- what is the old saying?
19 Let perfection be the enemy of good enough. We will simply
20 never move forward. These customers want Aloha out of the
21 picture. And it's not an easy course to take. Government is
22 not a risk free enterprise. I mean, I think there are some
23 risks along that course. But it is clearly in my mind that
24 that is what these customers want. They want someone with whom
25 they can deal easily, someone who does not regard them as

1 ill-informed, et cetera.

2 CHAIRMAN BAEZ: Did you have a question for Mr.
3 McLean? Because I do, if you don't.

4 COMMISSIONER EDGAR: Go ahead.

5 CHAIRMAN BAEZ: You're sure?

6 COMMISSIONER EDGAR: Yes.

7 CHAIRMAN BAEZ: Okay. Mr. McLean, and maybe since
8 you have worn so many hats recently, maybe you can answer
9 something I am unclear of. I'm unclear as to this Commission's
10 authority to legislate a company's attitude. Can you help me
11 understand that?

12 MR. McLEAN: Yes. As I said in my presentation, the
13 principal mandate for this agency and the reason they fill this
14 big building up with people is because the free marketplace
15 doesn't work when there is a monopoly provider of service. I
16 think it is your mandate, the compelling overriding mandate of
17 the Public Service Commission to bring the dynamics and
18 influences of a free marketplace to a place where they would
19 not naturally -- to a monopolistic provider and captive
20 customers. The dynamics of a free marketplace which would not
21 otherwise arise.

22 Customer service is a most important part of your
23 duties. In your initiating statute it talks about customer
24 service. In an extremely unusual case, such as Aloha, and I'm
25 happy to concede it stands alone. All the other cases the

1 Commission handles over here, I mean, if you look at the
2 animosity of a phone company whose initials are Supra, and all
3 kind of things like that, this one stands alone. This one has
4 cost you dearly.

5 I'm not suggesting that you should permit a company
6 to fail on a routine basis, but this is an exception. So the
7 direct answer to your question, I hope, is that your principal
8 mandate is to emulate the free marketplace in one where it
9 would not arise. And I think that is why they choose
10 Commissioners, and they fill the building up, and they hire me
11 to advocate on behalf of consumers is because that is what you
12 are supposed to do.

13 CHAIRMAN BAEZ: Here is what I'm having trouble with
14 in your answer. I don't believe, and this is just my opinion,
15 for what it's worth, I can no more make Mr. Watford, or any
16 other utility president, or any other utility employee that I
17 regulate wear a smile on their face and be nice as you can be
18 to their customers. In my view, the only thing I can do is to
19 make it costly for them if they don't. And to me I think there
20 is a difference.

21 MR. McLEAN: Yes, sir; I do, too.

22 CHAIRMAN BAEZ: And I also have -- I also share the
23 doubts as to the grounds of -- as to the long road of deletion.
24 And I want to clarify a couple of things that you said in your
25 answer to Commissioner Deason. I don't think that there has

1 been any -- I think we have talked around it, but a lot of the
2 discussion that I have heard here presupposes deletion in lieu
3 of -- as the inevitable alternative to a settlement. And I
4 don't think that's accurate.

5 I think that there is still a hearing, as
6 Commissioner Deason pointed out correctly, with legal burdens
7 to meet and legal requirements to adhere to, and that deletion
8 is by no means a foregone conclusion, even after or if this
9 settlement were not to be accepted. There is still a whole
10 process happening.

11 We talked a lot about the litigation process after
12 deletion. I think you have got to get over a big hurdle of
13 deletion for starters. All right. What I have heard you say,
14 and correct me if I'm wrong, what I have heard you say is that
15 given a choice, your interpretation of your customers or your
16 clients' wishes is that given a choice between good water, for
17 lack of a better word, water that is not smelly, water that is
18 no discolored, proper water, whatever that means, and having
19 the company providing it, if you follow what I'm saying.

20 MR. McLEAN: I do.

21 CHAIRMAN BAEZ: I mean, that they would rather not
22 have Aloha as their provider than have clean water. And is
23 that what you're -- or am I interpreting it wrong?

24 MR. McLEAN: If I have your question correctly, no,
25 it is not. They have an abiding conviction that Aloha will

1 never provide them with the kind of water that they want. I
2 believe that they have an abiding conviction that all of the
3 efforts that have been tried thus far have borne no fruit, and
4 that the water is much the same as it was in 1995.

5 So I think that, as you illustrate the point that it
6 is either this or this, I'm thinking that on the same hand
7 there is another choice, somebody else provide them good water.
8 And if it takes ten years to do it, c'est la vie. Now, that is
9 my interpretation, having listened to customers for a lot of
10 years, and it could differ from yours or from the Commission's
11 in general. But that is my perception. And believe you me,
12 reading their desires is my primary duty in representing them,
13 and that is the way I read it.

14 I also read that they believe that if you, and I
15 don't want to use the word abandon, but I can't think of a
16 better one, if you abandon the deletion proceeding, that you
17 will be snatching the rug out from underneath their bargaining
18 positions in terms of going forward with the kind of thing that
19 Commissioner Bradley was talking about, where you get
20 everything in the room and say, hey, guys, we have got to make
21 progress sooner or later, if you don't have deletion as a
22 possibility -- you know, you negotiate from strength.

23 CHAIRMAN BAEZ: Let me address that with a question
24 of Mr. Melson. And I'll take your word abandonment, and I'm
25 not sure I agree with the concept, but let's even say that.

1 Mr. Melson, even assuming, even assuming that under the terms
2 of the settlement certain litigation goes away, specifically
3 the deletion or the show cause case, the deletion case, does
4 the settlement itself establish -- I don't know how you would
5 -- let's call it new grounds for pursuing a deletion case.

6 MR. MELSON: Yes. And let me explain. First, under
7 the settlement, the initial thing that happens is the deletion
8 docket gets held in abeyance while we go about the process of
9 trying -- based on a University of South Florida study, based
10 on input from our consultant, and so forth, trying to find a
11 water quality solution. The case doesn't go away until we have
12 got to the end point of that process.

13 I think, as Commissioner Bradley has mentioned, there
14 may be -- there probably is a benefit to bringing as many
15 parties to that process as we can. We had anticipated, you
16 know, the Commission would be in that process, Public Counsel
17 would be in that process, customers would be in that process.
18 I think expanding that to include the county, to include the
19 water management district, to include DEP would be consistent
20 with the framework of the settlement.

21 Once we get to the point of having said, Aloha, go
22 forth and do X, and the deletion proceeding at that point, the
23 negotiation phase, if you will, is over. We have had the
24 hammer of cranking that proceeding back up throughout that
25 phase. Once we get to that phase and we order Aloha go forth

1 and implement this option, and we lay out a timetable for doing
2 that, if they don't then follow through, we have got the right
3 to bring a new enforcement action, be it for monetary penalty,
4 deletion, whatever the Commission at that point believes is
5 appropriate for violation of the order that said go forth and
6 do X.

7 So from my point of view we have got the negotiating
8 power. In the first instance, the deletion proceeding stays
9 alive until we choose a solution, and after we have chosen a
10 solution, we have got the power of bringing a new proceeding if
11 Aloha doesn't carry through on its commitments.

12 CHAIRMAN BAEZ: Commissioner Bradley, go ahead.

13 COMMISSIONER BRADLEY: And if we deny the settlement,
14 don't we have the same options that you just mentioned, also?

15 MR. MELSON: I think, Commissioner, legally you have
16 got the same options; practically, I think it is somewhat more
17 difficult, and let me explain. If you were to reject the
18 settlement without doing anything else, the parties could
19 always come together and sit down at the table and talk. But
20 given a hearing looming in January, I suspect the primary focus
21 of the parties' attention is going to be trying to beat each
22 other up and get each other bloody. And we are going to be
23 spending a lot of time and effort doing that that would detract
24 from going forward with a multi-party getting together.

25 COMMISSIONER BRADLEY: Let me tell you what I'm

1 getting at conceptually. As Mr. McLean so well explained, we
2 have a human relations problem here between the company and
3 their customers. I think that by denying the settlement, and
4 by Aloha deciding that, you know, we need to work on this human
5 relations problem so that we can have a better business
6 relationship with our customers. And if the customers are
7 willing to agree, also, that there needs to be some
8 relationship building, and that they need to sit down and talk
9 with Aloha, and they need to discuss this problem from the
10 standpoint of what can we do to make things better for
11 everyone, then I think that this whole process takes on a
12 different demeanor.

13 And that is basically what I'm getting at. Now, if,
14 on the other hand, if we dismiss and it Aloha decides to
15 continue to litigate, then the gap widens. And I don't know
16 what the parties are willing to do. Maybe that is something
17 that they might like to discuss before we get to the point
18 where we actually have to take a vote. They may be able to
19 solve the problem for us.

20 The other part of it would be to, as you suggested,
21 would be to hold in abeyance the deletion petition for a time
22 certain to see if, in fact, we can get the parties to sit down
23 and work this out. If not, then that pretty much indicates --
24 then we will know who is willing to work and who isn't. And I
25 don't know if that can be done, but that sounds like a workable

1 solution to me, but I don't know how we get there.

2 MR. MELSON: Commissioner, let me respond, and let me
3 say I see two potential ways of getting to the same place. And
4 I have a preference for one that may not be what your
5 preference is, but let me explain what those two ways are and
6 what I see as the pros and the cons.

7 I think if we were to hold the deletion docket in
8 abeyance for a time certain, and direct the parties to go off
9 and sit down and negotiate and to involve some of the other
10 agencies and see if we can come to a comprehensive solution,
11 that might very well lead to a good result. And, obviously, if
12 those negotiations go well then, as you say, it begins to mend
13 the fences between the customers and the company and show good
14 faith on both sides.

15 My concern about doing it exactly that way is we
16 potentially lose some of the other benefits of the offer of
17 settlement; locking in the interim refund, locking in a waiver
18 of attorneys fees, locking in some of those other things. My
19 personal preference, and that is all it is, it's Rick Melson's
20 personal preference, is I think the same goal could be
21 accomplished by approving the offer of settlement and
22 recognizing that this first phase of addressing the water
23 quality problem and selecting a solution is one that we will go
24 out and make very, very inclusive.

25 Which way is better? That is a judgment call you all

1 have to make. I'm glad you're sitting up there and I'm sitting
2 down here. I advise and you get to decide.

3 COMMISSIONER BRADLEY: And in the process of
4 negotiation, that can be a very clear understanding as to the
5 locking in, and to holding some of those items on the table
6 that Aloha is interested in. See, my problem with this
7 settlement is that, again, it manifests, in my opinion, bad
8 public policy. Because you have two parties here, one party is
9 very happy and the other party is very unhappy. Which, in my
10 opinion, when you have good public policy usually both parties
11 are saying, you know, I don't really care for this, but I can
12 live with it. But one is saying they can live with it, and the
13 other one is saying, hey, it's death to us.

14 So, you know, I heard the term used perception today.
15 Well, perception may not be the truth, but it is the truth of
16 that person who perceives it, or that group who perceives it.
17 So, you know, it's there. And, I don't know how we get to
18 where we are. I can tell you very clearly that I'm not going
19 to vote for the settlement. I will, however, entertain the
20 thought of some discussion, or some negotiation. I just don't
21 like -- I can't stomach this concept of all or nothing.

22 MR. MELSON: Yes, sir. And it would seem to me if
23 the settlement is voted down, I would hope that the parties
24 could agree, or the Commission could order that the -- to me,
25 if we're at war, it is going to interfere with that. So even

1 if you reject the offer of settlement, we need to find a way to
2 step back from the brink. To me that would be continuing the
3 deletion proceeding, holding it in abeyance so we are not
4 filing testimony and taking depositions starting in the next
5 couple of weeks.

6 It also, I think, should include holding some of the
7 other court cases and appeals in abeyance. Again, so that we
8 are not running up legal bills and fighting while we should be
9 at the table talking. If we could accomplish that --

10 COMMISSIONER BRADLEY: That happens if the party that
11 in the case is the most litigious decides that they will show
12 some goodwill and not take that tack from this point on, but to
13 sit down and try to figure out what can be done in order to
14 reach a settlement that is workable for all parties.

15 MR. MELSON: Yes, sir.

16 COMMISSIONER DEASON: Let me just make an
17 observation. And, Mr. McLean, not to put you on the spot, but
18 your two customers back there listening to Mr. Melson, one was
19 shaking his head vigorously no, and the other was shaking his
20 head vigorously yes. So --

21 MR. McLEAN: I'm familiar with that concept.

22 (Laughter.)

23 CHAIRMAN BAEZ: Which one of those is yours, Mr.
24 McLean?

25 MR. McLEAN: You know, let me undertake a burden here

1 which I will later regret, but I'll volunteer Mr. Reilly,
2 should you find that it works. There's a settlement here. As
3 I said in my talk, I believe it represents some substance. Why
4 don't you -- why don't we undertake, with Mr. Melson's
5 suggestion that perhaps things should be held in abeyance to
6 the extent they can be, why don't we undertake, we customers,
7 to present the Commission at a later agenda conference with a
8 written list of the improvements that we would like to see in
9 the settlement.

10 Now, I know that sounds like more time and more -- I
11 hate to discard the good work that staff has done and to
12 Aloha's credit, the concessions that they have made. I hate to
13 leave that behind 100 percent. I believe that the customers
14 are convinced that deletion is the only way out, but I'm not
15 sure that the customers have had a real clear opportunity to
16 articulate exactly what it is that they don't like about the
17 settlement in the form of writing. I don't know if that is
18 practical. It is a burden which my office is willing to
19 undertake if you believe that is a desirable course.

20 On the one hand, I do oppose the settlement. I would
21 sure hate to throw it out all at once without giving peace a
22 chance, you know, giving it half an opportunity. Are the heads
23 with me or agin me, I can't tell from here?

24 CHAIRMAN BAEZ: Well, I've got two concerns with your
25 proposal, and I don't know that we can overcome them. First of

1 all, at the risk of the running joke, at least two of the
2 customers that are here are not in total agreement. And if we
3 extrapolate that to the rest of your client base, you see the
4 problem --

5 MR. McLEAN: It may be an unrealistic goal.

6 CHAIRMAN BAEZ: -- with the reality of doing that.
7 Secondly, your suggestion was to present the Commission with a
8 list of improvements that you all, your clients, should you all
9 agree or find some consensus and come up with a list, which I
10 find a daunting task to begin with, you will present it to us.
11 I'm curious as to what you would expect us to do with it.

12 MR. McLEAN: Determine whether it serves the public
13 interest or whether it does not.

14 CHAIRMAN BAEZ: How do you mean?

15 MR. McLEAN: You look at the settlement and see if it
16 would fly as modified.

17 CHAIRMAN BAEZ: And modification is a -- I mean, now
18 it's the lawyers talking, right? That carries with it --

19 MR. McLEAN: It does indeed.

20 CHAIRMAN BAEZ: -- some weight.

21 MR. McLEAN: Let me say that it may be an unrealistic
22 hope that I harbor, but it is a burden that we're willing to
23 undertake if that would serve the Commission goal of some kind
24 of resolution down the way. I hope that it is a substantive
25 offer on my part, I certainly mean it that way, but in

1 practical it may not be.

2 CHAIRMAN BAEZ: What kind of improvements would you
3 contemplate being included? And I'm not going to hold you down
4 to anything, but I'm trying to get a feel for the kind of
5 improvements that you're talking about, because here is where
6 I'm having trouble. This settlement doesn't -- the settlement
7 only, in my interpretation or my understanding of it, only
8 purports to, a, do away with litigation, costly or otherwise,
9 all right, and lengthy, and also set up a framework for this
10 Commission ultimately to decide what a proper solution --
11 excuse me, a proper technical solution, physical solution is
12 going to be to this black water problem, which I don't believe
13 we have ever had before.

14 But that said, it has nothing to do -- you see what
15 I'm saying?

16 MR. McLEAN: Yes, sir.

17 CHAIRMAN BAEZ: There is a -- and I don't want to say
18 trade-off, but that is the scope of the settlement. And I'm
19 curious as to what, generally, you might feel is missing from
20 that?

21 MR. McLEAN: So am I, Mr. Chairman. I don't have an
22 answer for you. I'm sorry that I don't. What I propose to do
23 is try to glean from the customers what direction, if there is
24 any modification of the settlement which they would find
25 acceptable, perhaps other parties would, too. But I also might

1 have to come back to the table and say I'm sorry, the
2 settlement is unsatisfactory, and is so unsatisfactory that we
3 can't modify it. As a matter of fact, I think that is more
4 likely than not.

5 CHAIRMAN BAEZ: And let me ask you this. And this
6 may be, you know, putting you in a difficult situation to
7 answer, but, is there any other scenario, and I understand
8 already from the get-go that it is a less preferable scenario
9 that I'm asking you to identify. But is there any other
10 scenario where input for the kind of solutions and the kinds of
11 issues that you would anticipate coming up under your proposal
12 can be entertained, other than as part and parcel of a
13 settlement that we have got today?

14 MR. McLEAN: I think it would be wise for me to defer
15 to Mr. Reilly who has given the matter much more thought than
16 I.

17 CHAIRMAN BAEZ: Good pass.

18 MR. REILLY: I could offer one possible addition to
19 the settlement agreement. I asked Rick Melson does the
20 settlement agreement's review of all of these possible
21 solutions and treatments contemplate some or all of the wells
22 of Aloha to be taken off-line or treatment facilities? It is
23 called Carrollwood, one of the customers said. You know, that
24 there could be a -- that would involve all the parties, now, it
25 would involve SWFWMD, it would involve the water management

1 district possibly even purchasing or assigning to Tampa Bay the
2 consumptive use permits, there could be things of value given
3 to Pasco County and Tampa Bay that could inure to the benefit
4 of both Aloha's shareholders as well as Aloha's customers.

5 CHAIRMAN BAEZ: Mr. Reilly, let me ask your question
6 another way, because I had a curiosity about that, as well, and
7 I think we may have answered the question previously, because I
8 remember some discussion of that taking place the day before
9 yesterday at the customer meeting. But, Mr. Melson, is it your
10 understanding and is it your appreciation of the terms of the
11 settlement offer to limit the scope of alternatives to those
12 that would be identified as part of the USF study, or is the
13 opportunity for considering alternatives broader than that?

14 MR. MELSON: I think the opportunity is broader than
15 the USF study, but I don't think the intention was for it to be
16 as broad as the type of solution that Mr. Reilly is talking
17 about. Let me explain.

18 I think the settlement contemplates that there would
19 be approval of a water treatment option that would apply to
20 Aloha's existing wells. Aloha and staff in the negotiation
21 process did not focus on solutions that would involve Aloha
22 giving up property, whether it be through sale, donation, or
23 another means. That is something that I don't believe this
24 Commission has the power to impose.

25 Obviously that could be part of a negotiated

1 settlement. It was not part of our negotiations. And I
2 suspect Aloha, which has evidenced a strong desire to preserve
3 what it believes is the value of its assets, that might be a
4 solution that would not be on the table for them. But I don't
5 think it is one -- it is not one that is contemplated by the
6 four corners of the settlement that we negotiated.

7 CHAIRMAN BAEZ: And quickly, Mr. Wharton, not to open
8 up the floor to some extensive -- I mean, can I just ask you in
9 a limited sense, is Mr. Melson's assessment of what your
10 position might be fairly accurate?

11 MR. WHARTON: I believe it is in terms of retaining
12 our assets. The options that were mentioned by Commissioner
13 Hildebrand, and are sometimes intermittently mentioned, we have
14 spent years talking about these things. The wellfield she
15 mentioned is very remote in terms of miles. It would be very
16 expensive. But, yes.

17 CHAIRMAN BAEZ: The short answer is that Mr. Melson's
18 assessment of your position on at least those types of options
19 is accurate.

20 Commissioner Bradley, you had a question?

21 COMMISSIONER BRADLEY: Right. You know, I have given
22 this situation in general that is before us a lot of thought.
23 And, you know, when you go back to the initial permitting of
24 the wells, things were somewhat different in terms of what the
25 water quality was that was acceptable. DEP was involved. I

1 think the water management district was involved, and these
2 wells were permitted that basically produced sulfur water.
3 Well, who do you blame for the problem? Is it the initial
4 permitting process, or is it the company, or is it the
5 customers for building a house in an area where this problem
6 exists. Well, you can't blame anyone.

7 But the solution may be something that needs to be a
8 little bit different as compared to what we are discussing here
9 today. I think that Mr. Reilly has put on the table, in my
10 opinion, some very valid points. If you involve the water
11 management district, if you involve the county, if you involve
12 everyone who has a stake in the outcome, some folks may very
13 well give up some territory or come up with a solution that
14 resolves this issue. But I don't think we get there without a
15 discussion. You know, we need to go all the way back to how
16 this began and where we are right now in order to come up with
17 a solution. DEP may need to for sure take a look at the water
18 quality.

19 The water management district may need to decide that
20 -- or Tampa Bay Water may need to decide that they need to give
21 this business some relief by selling them water at a different
22 rate that would allow them to resolve this issue. But the
23 discussion has to occur. Otherwise -- and I know we are here
24 to deal with just what is before us, and that is the settlement
25 agreement, but in my opinion it goes a little bit further than

1 that. And the four corners, maybe we need to have six corners
2 here that we are discussing rather than four.

3 But, you know, I'm amenable to resolving the issue
4 because the customers deserve to have clean water, Aloha
5 deserves to have the right to be in business, but it has also
6 an obligation to sell clean water. But then I think that we
7 have an obligation to help them discover what needs to be done
8 in order to get that clean water. If it can't be done, then we
9 go back to the four corners, which is to discuss deletion. And
10 we stay into a mode of litigation until 100 years from now this
11 reaches a conclusion somewhere along the line.

12 I think it can be done, myself. I think that Mr.
13 McLean has put a preliminary idea on the table. I don't know
14 what Aloha's position is. You know, if it is all or nothing,
15 then I think that we need to vote on the agreement and let it
16 be all or nothing.

17 Mr. Wharton.

18 MR. WHARTON: May I, Mr. Chairman?

19 CHAIRMAN BAEZ: Yes.

20 MR. WHARTON: We believe that the USF report will
21 have the most cost-effective alternatives. But we are willing
22 to engage in any forum, any discussion involving anyone as
23 comprehensive or as limited as the Commission would desire, if,
24 as has been indicated, the hearing is stood down.

25 We are about to go into a fight for our life. And

1 the way the Commission uses prefiled testimony, our direct
2 testimony date, which is around November 14th, is really almost
3 like the first day of trial. So if you are going to pursue a
4 creative alternative as you are discussing, Commissioner, we
5 would just say I'm not sure the two can coexist.

6 And there have been other indications from your
7 general counsel, et cetera, that that might also need to be the
8 case. And, obviously, this Commission could decide that now.
9 I think staff's testimony is due in just a couple of days. We
10 would be willing to engage in the kind of efforts you are
11 talking about. We have continually said we would discuss with
12 the customers, and we would like the Commission to be involved,
13 the district, whoever the Commission deemed advisable. We
14 believe that the USF report, though, does outline the most
15 cost-effective. For instance, we can't buy water directly from
16 Tampa Bay under any circumstances.

17 COMMISSIONER BRADLEY: Well, I think we are
18 confronted with --

19 MR. MELSON: May I address a question to Mr. Wharton?
20 May I address the question to you and see if you are interested
21 in asking him?

22 CHAIRMAN BAEZ: Well, he is going to hear it anyway,
23 Rick.

24 MR. MELSON: If the Commission were to take no action
25 today on the offer for settlement, but were to stand down the

1 deletion proceeding to allow some further multi-party talks to
2 go on, would Aloha be willing to likewise stand down the
3 circuit court case and the two appeals so that we really can
4 focus all of our attention on the matter at hand, rather than
5 litigation?

6 MR. WHARTON: Yes, we would.

7 CHAIRMAN BAEZ: And exactly what is -- I'm glad there
8 is agreement to that. I'm just curious for my edification.
9 Well, at the risk of -- I mean, what does the customers'
10 attorney think about that? Let's start there.

11 MR. McLEAN: I think that makes sense. I believe
12 that makes sense. And I would urge, and I hope that there is a
13 consensus among the parties that we at least use the settlement
14 as a point of beginning for further talks. There are many
15 aspects of the settlement which are good, and we would like to
16 retain, but we may want to change other things. The customers
17 certainly recognize that compromise and negotiation go
18 hand-in-hand. But I hope that there is some consensus that we
19 use the settlement that staff has presented to you as a point
20 of beginning for further talks, as opposed to going back to
21 Square A and trying to get to where we already are.

22 CHAIRMAN BAEZ: I wouldn't advise anyone to try and
23 reinvent the wheel on this. It sounds unfortunate, but where
24 the line is is where the discussion starts. I would hope that
25 that is understood by everybody. I would hope -- and, again, I

1 don't know how the rest of the Commissioners feel. But,
2 fortunately, we have the prehearing officer on the deletion
3 case in the room so he will be able to hastily assess the
4 situation.

5 Commissioner Edgar, I know you had questions because
6 you told me a long time ago and we never got to them. But
7 before all of this sounds like it may wrap up somehow or
8 another, I want to get your questions out so we can add to --

9 COMMISSIONER EDGAR: Thank you. I have, actually, a
10 long list of questions. And every time I start to ask it,
11 somebody asks it first. So I think that means I'm on the right
12 track. That's what I'm going to tell myself, anyway.

13 Before we were brought back into the further
14 discussion of possible procedural options that may be available
15 and may be of interest, I need to go backwards a little bit
16 into some of the earlier points that were raised just to help
17 me with my thought process, if you'll indulge me.

18 First off, Mr. McLean, I want to thank you for being
19 here today and for giving us the benefit of your personal
20 experience and perspectives on this. I appreciate it. In some
21 of your responses to questions from our Chairman and from
22 Commissioner Deason, you made a couple of statements, one of
23 which I think you, in referring to your office said, and it was
24 either the people we represent, or the people I represent,
25 referring to your office. And in a later question you talked

1 about our duty and our responsibility under Chapter 367 and
2 other statutes to do what is in the public interest.

3 And so I guess my question is when you refer to those
4 that your office is representing, are you referring to or
5 representing a group of Aloha's customers, or all of Aloha's
6 customers?

7 MR. McLEAN: Your question goes to the fundamental
8 nature of our office, and it has not been clear, in my mind,
9 over the 15 years I have been associated with the office. It
10 is a very difficult question. And, that is, is the Office of
11 Public Counsel an independent party that appears before the
12 Commission or does it appear in a representative capacity. The
13 best answer I can give you is my view is it is a mixed one. We
14 are an independent entity, a party before the Commission, that
15 is guided through the political process by the customers that
16 the statute causes us to represent.

17 So let us suppose there is a scenario in which there
18 is a 25,000-person utility, and 500 of them want deleted. The
19 question for me to decide is whether the greater good is served
20 by supporting the deletion or not supporting the deletion. And
21 I have to be guided by the extent to which the customers of the
22 utility articulate their position. So I hope this is an
23 answer. We are an independent entity. We appear before you as
24 a party, but we are guided by the desires of the customers who
25 the statute charges us with representing.

1 The statute says that I represent the citizens of the
2 state of Florida, and I assume that means all of them. So I
3 hope that is an answer. It is a deep philosophical question
4 which I have wrestled with for years, and that is what I came
5 up with. I've given it a lot of thought.

6 COMMISSIONER EDGAR: Well, I'm pleased to know that
7 you have wrestled with it for years, because I have been
8 wrestling with it for the past eight months. And, again, I
9 feel some reassurance that others are still giving those
10 questions consideration.

11 MR. McLEAN: Let me elaborate just one more point. I
12 think we are something more than a law firm that appears in a
13 representative capacity. However, I think we are considerably
14 less than someone like the Governor, or the Attorney General,
15 who is charged with taking a public policy position themselves.
16 So it is probably --

17 COMMISSIONER EDGAR: As are we.

18 MR. McLEAN: Ma'am?

19 COMMISSIONER EDGAR: I said as are we.

20 MR. McLEAN: No kidding.

21 COMMISSIONER EDGAR: One of the points that I
22 continue to wrestle with in my mind, and I have ever since my
23 first day in this chair, which was a little over eight months
24 ago, January 4th to be exact. One of the very first items that
25 came before me on my very first day was the consideration of a

1 show cause for deletion. And, I think I can speak here as
2 saying for all of us, but certainly for myself, not wanting to
3 be presumptuous, we want to honor the wishes of a customer
4 group.

5 However, I still have concerns about potentially
6 taking actions that would honor the wishes of one group at
7 perhaps the increased financial burden of another group.
8 Again, from the perspective of your office, and your years of
9 experience on this issue, could you speak to that for me?

10 MR. McLEAN: Yes, ma'am. I don't accept that as
11 valid. I mean, I accept your concern as valid, I don't accept
12 the basic notion that if you carve a piece of a service area
13 out, it is to the detriment of the remaining customers because
14 the Commission has a time-honored procedure by which they can
15 consider to what extent the assets of a utility are used and
16 useful in the production of a utility service to the customers.
17 And if you cut out 20 percent, it sounds to me like it is 20
18 percent non-used and useful from that point forward.
19 Particularly if it is the judgment of the Commission that it
20 was because of mis, non, or malfeasance on the part of the
21 utility itself.

22 I think you would be on very solid ground to carve
23 that out. There are lesser considerations in administrative
24 and allocations -- administrative and general expenses and
25 allocations that you would have to deal with, and the devil is

1 often in the details.

2 But I do not accept that deletion of part of this
3 territory is to the detriment of the remaining customers. Not
4 if regulation functions as it should. You should isolate those
5 expenses and carve out the part that the remaining customers
6 would be expected to pay for.

7 COMMISSIONER EDGAR: What about the issue of the cost
8 or the litigation costs being spread across a smaller customer
9 base?

10 MR. McLEAN: That is a rather difficult question.
11 That presumes that the litigation costs would indeed be borne
12 by the customers, which is not necessarily true. That is
13 something that turns on your judgment. If you believe that the
14 utility's behavior over the past several years and into the
15 future is prudent, then they are entitled to recover it from
16 all the customers. Regulation constantly presents you with the
17 issue of to what extent you spread costs distinct to one
18 customer group or the rest of them, whether it is buried lines,
19 whether it is franchise fees, or anything. And there are a
20 number of solutions for that problem. But your concern is a
21 valid one.

22 It is undeniable that if the deletion proceedings
23 were ultimately unsuccessful, it is undeniable that some of
24 that burden, if not much of it, would fall on the customers who
25 have no interest in the outcome of the matter. And to some

1 minds, that might present a conflict, but it is one that
2 travels everywhere you go with regulation. You will see it --
3 if you look at almost any issue in regulation, you will find
4 that there is some inequity. You inevitably are moving value
5 from one customer group to another, and what you have got to do
6 is make some judgment about whether it is a reasonable level
7 that you are doing it. And if it is not, you shouldn't do it.

8 COMMISSIONER EDGAR: Just a comment, and I'm not
9 really asking you to respond to this. But I appreciate your
10 comments earlier about some of the real value that is in the
11 settlement proposal that is before us today. And I also
12 appreciate your comments about perhaps wanting the opportunity
13 to continue to work on that and maybe even the potential to
14 improve upon that proposal. And just a brief comment that I
15 would hope that those comments would extend possibly to other
16 settlement proposals that may come before us in the future.

17 Okay. I want to make a few comments, and then I'm
18 going to open it back up.

19 MR. McLEAN: Did I just get beat up on a little bit?
20 (Laughter.)

21 COMMISSIONER EDGAR: No. No, no, no. It's keeping
22 an open mind. All of us; me included.

23 CHAIRMAN BAEZ: That's stating what is obvious to
24 you, Mr. McLean, is that right?

25 COMMISSIONER EDGAR: Before we go further, because I

1 haven't said this, and I feel very much the need to get it on
2 the record. And I sense that we are getting ready to wrap here
3 soon, so I don't want to miss the opportunity. I really want
4 to thank and applaud our staff for their work and their
5 dedication on this issue. We all -- all of us, I know, in this
6 room want, you know, productive, fruitful resolution. We all
7 want what is in the best interest of the customers. And I
8 really thank you for working on a very, very, very difficult
9 issue and bringing something forward to us for consideration
10 and for discussion.

11 I also do believe that the proposal that is before
12 us, if it were to be adopted and move forward, would help the
13 Commission, the customers, and the company focus our efforts
14 more on resolution of the concerns of the customers with the
15 quality of the product that they have received and will
16 receive. And I applaud that, as well.

17 Mr. McLean, I do appreciate your comments about how
18 we would deal with this cost spread across customer base in the
19 interest of one group, perhaps in the interest of another, I do
20 appreciate your comments on that. And I do still remain
21 concerned about taking one action to help one group that could
22 potentially either by our action or by the action of -- in
23 another forum causing some effects that we would have concerns
24 with.

25 With all of that said, though, I continue to have

1 difficulty getting past the public testimony and the documented
2 complaints that I have heard and that we have heard from
3 hundreds of customers both in this docket or item before us and
4 in past ones. I also believe that a regulated state certified
5 monopoly supplier of a vital service has a duty of care which
6 goes beyond just meeting minimum health standards.

7 And as I said earlier, I do believe that this
8 Commission is vested with the authority and a responsibility to
9 regulate, and in some instances, monitor whether a utility is
10 operating in the public interest per Chapter 367 and other
11 statutes. And I'm almost done.

12 I also want to make the point that I do recognize the
13 right of all citizens, all companies, to appellate review. I
14 do, though, sometimes have some frustration with what can
15 appear to be a pattern or a strategy of delay. And I also,
16 since I have the floor, I have to say that I am somewhat
17 confounded by the testimony that I have heard from the county.
18 And I wish that their position, desires, and potential role in
19 a solution was more clear to me than it is today, even with all
20 the questions that have been asked and answers that have been
21 received.

22 So with those thoughts and comments, and recognizing
23 that I don't have a crystal ball as to where the different
24 options will take us, I, too, again, to sum up, recognize many,
25 many good points in the settlement, and I think bringing it

1 forward was the right thing to do. I do have some concerns
2 about whether it is the best right thing right now, and I'm
3 very open to seeing if we can put something together that
4 allows us all to benefit from the discussions that have lead us
5 up to this point, and maybe bring in some other parties that
6 can help us continue to move forward.

7 CHAIRMAN BAEZ: Thank you, Commissioner, for those
8 thoughts and comments. And whenever you have the floor, you
9 can go as long as you want. I'm not here rushing you along or
10 anything, at least I don't think I am.

11 Ladies and gentlemen, we were at some point
12 discussing perhaps a list of dockets and cases that needed some
13 type of postponement action, I don't know what to call it
14 precisely, if we were of a mind to facilitate some more
15 conversation and some more discussion among the parties.

16 Do you have a fixed list, do you know --

17 MR. WHARTON: I believe they are in the settlement
18 agreement. And as long as the status quo was maintained on
19 those things specifically mentioned in the settlement
20 agreement, we would be willing to engage in any activity to
21 further this matter.

22 CHAIRMAN BAEZ: Okay. Recognizing that perhaps only
23 one of those has directly anything to do with this Commission,
24 by that I mean that we can control the movement or lack thereof
25 of a docket, what is it that we need to do?

1 MR. MELSON: We actually have two dockets that are
2 sort of in our court. The show cause docket and the
3 investigation docket, which is an investigation into whether
4 other territories should be brought in for deletion.

5 CHAIRMAN BAEZ: That's correct.

6 MR. MELSON: If the January hearing and the show
7 cause docket were canceled and those dockets were placed in
8 abeyance either with or without rescheduling the hearing in the
9 shows cause docket, then the appeals and circuit court case, it
10 sounds like we can deal with Aloha in terms of getting those
11 placed in abeyance, that would create a window of opportunity
12 for the kind of continued discussions you have been talking
13 about.

14 CHAIRMAN BAEZ: Mr. Wharton, are you in agreement
15 with that assessment or --

16 MR. WHARTON: We are. It was a little iffy to me
17 about asking the DCA to abate. But Mr. Melson seems to think
18 that there have been circumstances where they will do that.
19 And, therefore, we would be willing to ask them to do that.

20 MR. MELSON: And we would join that motion with them.
21 And if the DCA decided not to abate, then I guess we would go
22 ahead and have an oral argument and somebody would win and
23 somebody would lose.

24 CHAIRMAN BAEZ: Very well. What kind of timing
25 issues, if any, do we need to address as part of this

1 possibility at this point, I guess?

2 MR. MELSON: It seems to me that with the number of
3 parties that are going to be involved, that a 60-day is sort of
4 a minimum. My personal preference would be to have the staff
5 or the parties report back to the Commission at the conclusion
6 of that period, and see if a further abeyance is warranted if
7 we are making progress. We could come back at the end of 30
8 days, if it is clear that zero progress is possible. But I
9 don't know whether it would be your pleasure at this point to
10 find new tentative hearing dates and simply slip an existing
11 schedule by some period of time, or whether to do it sort of
12 indefinitely with us coming back to you in 60 days.

13 CHAIRMAN BAEZ: And, Commissioners, for what it is
14 worth, I'll give you my feeling on that particular matter. I
15 don't think -- I think we have a responsibility to address this
16 issue one way or another. While I am, believe it or not, an
17 optimist at heart, I think that this new opportunity that we
18 seem to be considering and opening up will produce some good
19 incremental results. I really mean that. But I also do feel a
20 responsibility to keep the dockets, at least let us see where
21 the progress, you know, where resolution is going to begin.
22 And I say it with all innocence, really.

23 I don't think it serves us any purpose to
24 indefinitely postpone something that has been going on. I
25 don't think it is fair for the company as well, frankly. I

1 don't think the customers want it, you know, having some
2 open-ended situation. If it is sixty days and we reassess, I
3 would feel much more comfortable with that because we are
4 actually reassessing.

5 MR. MELSON: And, Commissioner, with that guidance
6 from the bench --

7 CHAIRMAN BAEZ: I don't know how the rest of the
8 Commissioners feel. I'm speaking for myself.

9 MR. MELSON: With that guidance from the chair --

10 CHAIRMAN BAEZ: Okay. Fair enough.

11 MR. MELSON: I would think one might look at hearing
12 dates 90 days out rather than 60. And the reason I say that is
13 we could then come back in 60 days and say where we were and
14 have time to go through the recommendation process and an
15 agenda process. Whereas if we simply set things 60 days out,
16 then in the real world we have got to be back in 35 or 40
17 starting the recommendation process.

18 CHAIRMAN BAEZ: Very well.

19 MR. MELSON: What I would be interested in, if you
20 are going to establish dates, to establish dates and then to
21 slip the existing schedule sort of by whatever that number of
22 days is with the expectation that we have got to come back to
23 you either with a solution, or progress, or no progress
24 somewhere in that window.

25 CHAIRMAN BAEZ: And I will have the Chairman's Office

1 find those, obviously weather permitting, but, you know, that
2 seems like a reasonable endeavor, a way to deal with it.

3 Commissioners --

4 MR. WHARTON: There is perhaps one unresolved issue,
5 if I may, Mr. Chairman.

6 CHAIRMAN BAEZ: Mr. Wharton.

7 MR. WHARTON: And that is that just staying some of
8 the appeals that have not had the effect of staying the orders,
9 means that there are some things happening in a few dockets,
10 like this investigation docket, that I wonder if it wouldn't be
11 consistent with what we are suggesting to stand everything
12 down, to stand those orders down which are in effect, even
13 though we have appealed. The appeal would be stood down, but
14 they would still be going through the things that the order
15 requires.

16 CHAIRMAN BAEZ: I didn't get that. I'm not sure that
17 that was the case. If that is the case, let's talk about it.

18 MR. MELSON: And just thinking out loud, there are
19 two dockets that are probably in that status. The
20 investigation docket, and it seems to me if we stand down the
21 show cause, we should also stand down the investigation docket
22 for an equivalent period of time.

23 The other case that I assume Mr. Wharton is referring
24 to is what I'm going to call the water quality docket, which is
25 the one that establishes the goal and establishes testing

1 standards. And I guess I'm not sure exactly, I don't know yet
2 the basis for the company's appeal of that docket, for example.
3 They have simply filed the notice of appeal. I don't know what
4 relief they would be looking for in that docket.

5 MR. WHARTON: Only to the extent that that order
6 requires things to happen during the period in which we would
7 be standing down, perhaps it would be consistent that --

8 CHAIRMAN BAEZ: Such as --

9 MR. MELSON: I think it would be the initiation of
10 testing is the only thing I can think of that order would
11 require during that period.

12 CHAIRMAN BAEZ: Is that what you're referring to,
13 Mr. Wharton?

14 MR. WHARTON: There may be nothing. I'm really just
15 making a generic statement that even though we have appealed, a
16 couple of the orders are in effect.

17 CHAIRMAN BAEZ: Well, then maybe we can short-circuit
18 that. Or then, again, maybe not. There is some lack of
19 clarity as to what might be in that docket or in that order
20 that even you would need to address. And I don't know that we
21 can resolve it or identify it.

22 COMMISSIONER BRADLEY: Well, Mr. Chairman, before we
23 resolve that, I would like to hear from -- since we have
24 decided that we are going to open this up to have a discussion
25 among all the parties, I need for Mr. McLean to weigh in and

1 tell us what he thinks about where we are right now.

2 CHAIRMAN BAEZ: Mr. McLean, you started this, so --

3 MR. McLEAN: Thank you. I know. That occurred to
4 me. Oh, you're talking about this thing going on right now?

5 COMMISSIONER BRADLEY: The customers, right, I
6 need --

7 MR. McLEAN: Commissioner Bradley, I'm perfectly
8 comfortable with the direction things have taken. It sounds
9 like what you want to do, and we started it as you said, hold
10 the status quo, whatever it is, nobody gets in trouble for
11 violation of an order during this period of time, and we do
12 what we can to persuade the court. And I join Mr. Melson, I
13 think the courts are more than happy to hope that the parties
14 come to their own agreement so they don't have been to fool
15 with the case.

16 But to hold the status quo during a period of time,
17 60 days or perhaps 90 days, whatever the time is, to give us an
18 opportunity to get together and see if we can improve the
19 settlement agreement, see if we can make the settlement
20 agreement satisfactory enough to the customers so that they can
21 support it. That is the gist of what I hear going on, and I'm
22 perfectly comfortable with that.

23 I have been looking for an opportunity to stick this
24 in somewhere. I cannot guarantee you results. I very much
25 hope that the customers -- that we can craft a settlement

1 agreement that the customers can join onto, but I do not want
2 you to rely on any representation from me that it is going to
3 happen. We'll try.

4 CHAIRMAN BAEZ: But while I accept your lack of
5 guarantee, all right, I will send out a message to the
6 customers, to your clients, some of the more prominent ones
7 which are here today. This may turn out -- I don't even think
8 we have reached a consensus here, but to the extent that we
9 were to -- Mr. Forehand and Mr. Hawcroft you are here and have
10 spoken, this is your opportunity not to -- if there are no
11 results, we will know why.

12 COMMISSIONER BRADLEY: That also needs to go to
13 Aloha.

14 CHAIRMAN BAEZ: Commissioner Bradley, respectfully, I
15 cannot agree with that. I think the results that they have
16 been able to fashion, whatever they have been, are before us
17 today. You know, think what you will of them. In an absolute
18 sense, those are results. Clearly, I would encourage -- Mr.
19 Wharton, I would encourage you and your client to please be
20 open-minded and continue, because I think the incremental
21 results that can be provided are -- the more the better.

22 MR. WHARTON: We will engage in a good-faith
23 dialogue, Commissioner Bradley, and all the Commissioners, with
24 the customers and with all the participants.

25 CHAIRMAN BAEZ: And don't misinterpret whatever

1 disagreement I just had with Commissioner Bradley as saying
2 that you have got nothing more to do.

3 COMMISSIONER BRADLEY: Let me clear up where I am on
4 this. I want to see not a discussion between Aloha and our
5 staff, I want to see a discussion between Aloha, the customers,
6 and our staff.

7 If our staff comes to an agreement just with Aloha,
8 then that is not going to wash with me. If they come to me
9 with an agreement between Aloha, the customers, and our staff,
10 then that is what I'm going to look favorably at.

11 MR. WHARTON: We'll do our best.

12 COMMISSIONER BRADLEY: And as Mr. McLean said, if you
13 can't come up with an agreement, at least you have made a good
14 faith effort, and then we will do what we need to do in order
15 to resolve these issues from a regulatory perspective. And
16 this is just an attempt to open up dialogue to see if the
17 parties who have a vested interest in this matter that is
18 before us can agree. So we have just given an extension of
19 time to take another stab at it.

20 CHAIRMAN BAEZ: And on that I can agree with you,
21 Commissioner Bradley.

22 I was just about to say something regarding the water
23 quality docket. You don't know what those --

24 MR. WHARTON: I'm satisfied with the representation
25 that we will maintain the status quo.

1 CHAIRMAN BAEZ: Fair enough.

2 MR. MELSON: That's fine.

3 CHAIRMAN BAEZ: Commissioners, I don't think this is
4 the kind of thing we need to entertain a motion, but if we can
5 have by a show of nodding your heads if there is some kind of
6 consensus as to the parameters that we have discussed. If you
7 have anything else to add, please, now is the time. You know,
8 any thoughts or any words of encouragement, if you will.

9 COMMISSIONER BRADLEY: Go out and do good work.

10 COMMISSIONER EDGAR: Go forth and do good.

11 CHAIRMAN BAEZ: Very well. With that, is there
12 anything else -- at this point, Mr. Melson, is there anything
13 that we need to fix as the Commission in order for you all to
14 proceed with what we have discussed?

15 MR. MELSON: I was listening to a conversation behind
16 me. Have you essentially reached a consensus, and I don't
17 think it necessarily requires a vote. Things will be held in
18 abeyance for 90 days and we'll work on the schedule.

19 CHAIRMAN BAEZ: We didn't take a vote, but I think I
20 saw everyone assent to --

21 MR. MELSON: We will get with your office, then, on a
22 hearing schedule and with the prehearing officer on new
23 testimony dates, and then hopefully never have to use them.

24 CHAIRMAN BAEZ: Thank you. Is there anything else
25 with any of the parties that we need to take up at this point?

1 MR. WHARTON: Mr. Chairman, have we set the precedent
2 that in the future I can walk in here like I just came from
3 Antigua?

4 CHAIRMAN BAEZ: Well, you know, what you do outside
5 those doors is none of my business. (Laughter.)

6 Very well. I want to thank you all. This is not an
7 empty -- this was not an empty meeting, and I'm very encouraged
8 by it. I want to thank you all for your hard work and
9 certainly for everyone else that came and had comments for us,
10 and Commissioners, as well, for their efforts.

11 Good luck, everyone. Thank you.

12 MR. McLEAN: Thank you, Commissioners.

13 (The special agenda concluded at 12:45 p.m.)
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COUNTY OF LEON)

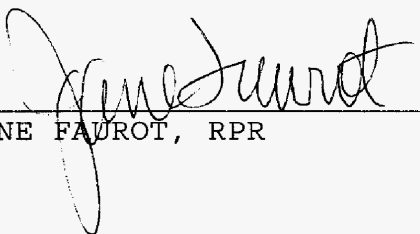
CERTIFICATE OF REPORTER

We, LINDA BOLES, RPR, CRR, and JANE FAUROT, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

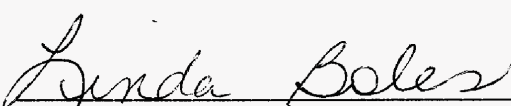
IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 22ND DAY OF AUGUST, 2005.



JANE FAUROT, RPR



LINDA BOLES, RPR, CRR

Official Commission Reporters
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