

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010503-WU

In the Matter of

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

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THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 2

Pages 197 through 253

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE:

Wednesday, January 9, 2002

TIME:

Commenced at 10:10 a.m.

PLACE:

Clarion Hotel
5316 U. S. Highway 19 North
New Port Richey, Florida

REPORTED BY:

LINDA BOLES, RPR
Official FPSC Reporter
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APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

CHAIRMAN JABER: Let's go ahead and reconvene the hearing. This is the technical evidentiary part of the hearing. And, Mr. Jaeger, it's my understanding you all have agreed to take up Mr. Van Hoofnagle as the first witness.

MR. JAEGER: Yes, Chairman. And also, if we have time, Mr. Foster. It just depends on how long Mr. Hoofnagle goes if we get into the second customer session.

CHAIRMAN JABER: All right. Now, Mr. Hoofnagle, you have not been sworn; right?

THE WITNESS: That's correct. I have not.

CHAIRMAN JABER: If you will raise your right hand.

VAN HOOFNAGLE

was called as a witness on behalf of the Staff of the Florida Public Service Commission and, having been duly sworn, testified as follows:

MR. WHARTON: Chairman Jaber?

CHAIRMAN JABER: Yes.

MR. WHARTON: I do this with some trepidation, but you asked me to remind you after lunch and I didn't because the service hearing wasn't over. Now if our witnesses -- well, it doesn't -- if our witnesses, if there's any chance our witnesses are going to testify today, I'd like to make my motion now. If there is no chance that they are going to

1 testify today, I can make it at the end of the day, but just so
2 they have a little lead time.

3 CHAIRMAN JABER: You know, Mr. Wharton, realistically
4 I don't think we're going to get to your witnesses today.
5 Parties, you can correct me if I'm wrong, but my intent is that
6 we finish Mr. Hoofnagle if we are that lucky tonight, we pick
7 up with the 6:00 customer service hearing, and then I'm going
8 to adjourn for the evening and we'll pick up tomorrow morning
9 at 8:30.

10 MR. WHARTON: So I can, so I could make my motion at
11 the end of the evening?

12 CHAIRMAN JABER: Yes.

13 MR. WHARTON: Good.

14 CHAIRMAN JABER: Thank you.

15 MR. WHARTON: Thank you.

16 DIRECT EXAMINATION

17 BY MR. JAEGER:

18 Q Mr. Hoofnagle, please state your name and business
19 address for the record.

20 A My name is Van Hoofnagle. My address is the Florida
21 DEP, 2600 Blair Stone Road, Tallahassee.

22 Q In what capacity are you employed by DEP?

23 A I'm the Administrator of the Drinking Water Section.

24 Q Have you prefiled direct testimony in this docket
25 consisting of seven pages?

1 A Yes, I have.

2 Q And do you have any changes or corrections to your
3 testimony?

4 A Yes. There are two corrections.

5 On page six, line 25.

6 Q That's 21, you mean?

7 A Line 25 on page six. Hopefully I have the same copy
8 you do. I had indicated that the building code would become
9 effective on January 1st. I have since learned it's March 1st.

10 Q Okay.

11 A And, secondly, on page seven --

12 CHAIRMAN JABER: Wait. I'm sorry, Mr. Hoofnagle.
13 Hang on one second. You said page six, page six, line --

14 MR. JAEGER: Five.

15 THE WITNESS: Excuse me. Line 24. It ends with the
16 word "January."

17 CHAIRMAN JABER: Okay. It's page six, line five on
18 our copy that ends with January 1st, 2002?

19 THE WITNESS: Yeah. We have different copies then.

20 CHAIRMAN JABER: Okay. Read me the whole sentence,
21 please, and we'll make the changes.

22 THE WITNESS: It's an answer in response to a
23 question. The question being, also, have there been changes to
24 the building codes?

25 My answer was, yes, as I understand it they will

1 become effective on January 1, 2002.

2 It's my understanding now that that's been changed to
3 March 1st, 2002.

4 CHAIRMAN JABER: Thank you. Do you have any other
5 changes?

6 THE WITNESS: Well, there's another change but,
7 again, the lines or pages may be different. On my copy it
8 would be page seven, a rather lengthy answer to the question
9 that was asked about what Aloha Utilities could do to eliminate
10 the black water problem. Down in the text of that I referenced
11 a process or a system called MIOX, M-I-O-X, in capital letters.
12 That should be MIEX, M-I-E-X.

13 MR. JAEGER: That's page six, line 21. And I'm not
14 sure why he has a different version than what we have.

15 THE WITNESS: I may have several versions in my
16 files.

17 CHAIRMAN JABER: It's quite all right. To the degree
18 it becomes confusing on cross-examination, Mr. Jaeger, just be
19 prepared to hand your witness a copy that corresponds with
20 everyone else's pages.

21 MR. JAEGER: Okay.

22 BY MR. JAEGER:

23 Q And I think you also, there was an extra two in line,
24 that same line. It says, which I might add may to be. Don't
25 you mean, may be a relatively cost-effective position, so

1 delete "to"?

2 A Yes. That's correct.

3 Q Are those all the corrections you have?

4 A Yes.

5 MR. JAEGER: Madam Chairman, may we have Mr.
6 Hoofnagle's testimony inserted into the record as though read?

7 CHAIRMAN JABER: Yes. The prefiled direct testimony
8 of Van Hoofnagle shall be inserted into the record as though
9 read.

10 BY MR. JAEGER:

11 Q Mr. Hoofnagle, did you also file Exhibit Numbers VH-1
12 through VH-2 to your testimony?

13 A Yes.

14 Q Do you have any changes or corrections to any of
15 those exhibits?

16 A No.

17 MR. JAEGER: Chairman, may we have those exhibits
18 identified as a composite exhibit? And I guess this is the
19 first one.

20 CHAIRMAN JABER: Yes. VH-1 and VH-2 shall be
21 identified as Composite Exhibit 1.

22 (Exhibit 1 marked for identification.)

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DIRECT TESTIMONY OF VAN HOOFNAGLE

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Q. Please state your name and business address.

A. My name is Van Robert Hoofnagle and my business address is Florida Department of Environmental Protection (DEP), 2600 Blair Stone Road, Tallahassee, FL 32399-2400.

Q. Please give a brief description of your educational background and experience.

A. I received a B.S. in Civil Engineering from the University of Washington, Seattle; a Master of Engineering in Civil Engineering from the University of Virginia, Charlottesville. I also attended the United States Military Academy for 1-½ years. My experience includes 2 years in the U.S. Army, 2 years in the Peace Corps where I worked as a civil engineer for the Costa Rican National Park Service. I was an assistant project engineer with Gannett Fleming Engineers in Harrisburg, PA working in the wastewater and facility planning division of that consulting firm. For the last 21 years I have worked for the Florida DEP; for the first 11 years in the Construction Grants and later SRF Program and for the last 10 years I have been the Administrator of the Department's Drinking Water Program.

Q. By whom are you presently employed?

A. As stated above I am now employed by the DEP.

Q. How long have you been employed by DEP and in what capacity?

A. As stated above I have been with DEP for 21 years and as the Administrator of the Drinking Water Section for the last 10 years.

Q. What are your general responsibilities at DEP?

A. As Administrator of the Drinking Water Program I have general oversight of

1 the implementation of the State and Federal Safe Drinking Water Acts.
2 Specifically, we develop program guidance, policy, rules, provide training and
3 public education, manage the state and federal budgets for the program, manage
4 the entire drinking water database, generate reports, and occasionally manage
5 special studies and projects.

6 Q. Are you familiar with the Seven Springs water division of Aloha Utilities,
7 Inc.?

8 A. I am somewhat familiar with this area and its problems.

9 Q. Are you familiar with the "black water" problem that some customers of the
10 Seven Springs water division of Aloha Utilities, Inc., have experienced and
11 are still experiencing?

12 A. Yes, I have had significant involvement with this issue.

13 Q. Has the black substance in what is known as "black water" experienced by
14 some Aloha customers been analyzed?

15 A. Yes

16 Q. If so, what is it?

17 A. The black material is the compound copper sulfide.

18 Q. Is it possible to create copper sulfide without a source of copper?

19 A. No, however, there are several factors necessary in the formation of Copper
20 sulfide, including, an energy source (usually metal ions), time and
21 temperature, the presence of sulfur reducing bacteria, and either sulfates or
22 elemental sulfur.

23 Q. Is the "black water" being formed in the customers' pipes after the meter?

24 A. Yes, but the conditions above are found in both the customers' hot water
25 heaters and the elemental sulfur or sulfates are introduced from the

1 | distribution system.

2 | Q. If the water at the meter meets all drinking standards does this formation
3 | of "black water" after the meter constitute a violation of federal or state
4 | drinking water standards?

5 | A. No.

6 | Q. Please explain how this "black water" is formed.

7 | A. Briefly, it is suspected that black water is being formed by the sulfates
8 | or sulfur reacting with metal ions and sulfur reducing bacteria in the hot
9 | water tanks in the presence of warm temperatures (say about 120 to 130 degrees
10 | F) and time. Hydrogen sulfide is formed and then reacts with copper in the
11 | plumbing of the home to precipitate out copper sulfide (black water).

12 | Q. Do you know of any other utilities that are experiencing or have
13 | experienced "black water"?

14 | A. Yes.

15 | Q. Please list utility and county.

16 | A. In discussions over the years with other DEP District Offices, utility
17 | managers and Department of Health drinking water staff there have been
18 | occurrences of black water problems in Volusia County, the Ft. Myers area
19 | facilities, and Polk, Hillsborough, Pasco and Pinellas Counties. However, it
20 | also appears that most of these events are episodic or have been resolved.

21 | Q. Do you know of any other utilities that are experiencing or have
22 | experienced copper corrosion problems due to hydrogen sulfide?

23 | A. This is a tougher issue to identify exactly. There is presently a very
24 | significant copper corrosion problem being encountered throughout the Central
25 | Florida Corridor up into the City of Jacksonville. Since there are a number

1 of different forms of copper corrosion types it remains unclear if they are
2 solely due to hydrogen sulfide or due to other forms of corrosion.

3 Q. Please list utility and county.

4 A. I'm sorry, but I do not know them by utility name. My source of
5 information of this phenomenon comes from meetings with the Plumbers and
6 Contractors on the Building Code Task Force (or Committee) Meetings I attended
7 several months to a year ago.

8 Q. Did you participate in the Interagency Copper Pipe Corrosion Project?

9 A. Yes.

10 Q. Subsequent to this Interagency Project, has DEP taken any actions to try
11 to prevent or alleviate the occurrence of "black water" or excessive copper
12 corrosion?

13 A. Yes.

14 Q. Could you explain what actions have been taken and any rules that may be
15 proposed?

16 A. During the last regular Legislative Session (2001) The DEP worked with
17 Legislators to craft a bill and revise statutory language that would authorize
18 and empower the DEP to require any utility proposing to add new wells to do
19 additional testing for selected water quality parameters to ensure that
20 drinking water standards would not be violated at the customer's tap. Senate
21 Bill 2030 was passed and placed into the Florida Law as Chapter 2001-270. As
22 a result, Florida Statutes have been amended (Chapter 403.861(17)) and the
23 Drinking Water Section is presently drafting rules to implement that statute.
24 The draft rules will address some of the recommendations of the May 2001
25 Interagency Copper Pipe Corrosion Project Final Report.

1 Q. Have there been any statutory changes?

2 A. Yes, as stated above and I have attached Chapter 403.861, F.S. to my
3 testimony as Exhibit VH-1

4 Q. Also, have there been any changes to the building codes?

5 A. Yes, as I understand it they will become effective on ~~January~~ ^{March} 1, 2002,
6 although I am not familiar with those changes as they may affect this issue.

7 Q. Did the Interagency Copper Pipe Corrosion Project issue a Final Report
8 dated May 2001?

9 A. Yes. I have attached that report to my testimony as Exhibit VH-2.

10 Q. In your opinion what could Aloha Utilities do to eliminate the "black
11 water" problem?

12 A. While I cannot address the cost issues and any debate or calculation of
13 rates, there are a number of things the utility might study and implement to
14 reduce or eliminate over time the 'black water' problems now being
15 experienced. There is no panacea or guarantees due to the complex nature of
16 the water and corrosion chemistry and relatively unique specific conditions
17 that are found in their waters. However, aeration with pre and post pH
18 adjustment added with alkalinity control has proven the most effective in
19 other parts of Florida. Additionally there are emerging technologies that
20 lend themselves to addressing the future Disinfection Byproducts Rule as
21 well, such as the ~~MIOX~~ ^{MIEX} system; which I might add may to be a relatively cost
22 effective solution. Since the black water problems do not appear in all of
23 Aloha's service subareas, it is the DEP's belief at this time that a
24 centralized treatment system would not be cost effective. Future and on-going
25 engineering and cost studies need to identify technical solutions and their

1 | associated costs.

2 | Q. Do you have anything further to add?

3 | A. No, I do not.

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1 BY MR. JAEGER:

2 Q Mr. Hoofnagle, could you briefly summarize your
3 testimony?

4 A Yes. There's three or four points that I made in my
5 testimony. One was the nature of the black water phenomena
6 identifying it as copper sulfide, the conditions for its
7 formation, how that, our position it's being formed within the
8 Aloha systems in the homes.

9 Secondly, some discussion about other locations in
10 which black water has been found throughout the state. There
11 have been periodic or episodal instances of black water found
12 in other counties that I'm aware of. They have not been long
13 in duration, but we are familiar with instances in Volusia and
14 the Ft. Myers area.

15 Thirdly, and most of the testimony is on the
16 recommendations that I was involved in in the Interagency
17 Copper Pipe Corrosion Project dated May 2001, which I believe
18 is part of the composite exhibit, and a discussion about those
19 recommendations and where we stand on those regarding
20 legislation, new rules and some of the public educational
21 components.

22 And finally there was a discussion on professional
23 opinion regarding what Aloha could do at this particular point
24 to alleviate the black water situation.

25 Q That concludes your summary?

1 Also, the central district, which I didn't mention,
2 also strongly encourages utilities to provide aeration when
3 there's evidence of high hydrogen sulfide levels in the raw
4 source water groundwater.

5 Q Are you familiar with permitting requirements and
6 your agency's involvement in that, in permitting requirements
7 of water plants?

8 A Our headquarters unit does not do, one of the few
9 things we do not do is permitting, but we do oversee the
10 permitting rules, Chapter 62-555, so I do have some familiarity
11 with the permitting requirements. But we do not issue permits
12 out of our headquarters office. That's done through the
13 district offices or the approved county offices.

14 Q Okay. Thank you.

15 A It would depend upon your specific question about
16 permits and so forth.

17 MR. BURGESS: Thank you. That's all I have.

18 CHAIRMAN JABER: Ms. Lytle, do you have any
19 cross-examination questions?

20 MS. LYTLE: No. I have no questions for this
21 witness.

22 CHAIRMAN JABER: Thank you.

23 Mr. Wharton?

24 MR. WHARTON: Yes.

25 CROSS EXAMINATION

1 BY MR. WHARTON:

2 Q Good evening, Mr. Hoofnagle.

3 Now you worked on the Interagency Copper Pipe
4 Corrosion Project Final Report, didn't you?

5 A Yes.

6 Q And that report indicated that significant problems
7 exist from the Jacksonville area through the Tampa area and
8 Central Florida.

9 A Initially when the committees were formed of the
10 three work groups in this interagency effort we were
11 concentrating specifically on black water. But in the course
12 of the events we have sort of expanded our scope to the whole
13 issue of copper pipe corrosion. And in Central Florida, the
14 I-4 corridor and extending up to the northeast areas in
15 Jacksonville, for example, there has been significant copper
16 pipe failures through that entire region.

17 Q So that would include from the Jacksonville area
18 through the Tampa area in Central Florida?

19 A Yes.

20 Q Okay. Would you agree there have been instances of
21 black water which have extended pretty well everywhere from the
22 east coast of Central Florida and a little bit into the
23 southwestern area like Ft. Myers?

24 A Yes. But I certainly could not quantify that. When
25 you do talk to our district offices and so forth, they're a

1 little short on examples. It's, we do not see this particular
2 problem as extensively as we have in Aloha.

3 Q You would agree that there's a list of possible
4 suspects of things that may be contributing to this copper
5 corrosion problem?

6 A Yes. There isn't simply one criterion or one
7 condition that causes the black water phenomena. It takes a
8 host of conditions working together to create the phenomena.

9 Q And each of those things is occurring inside the
10 customers' homes; correct?

11 A Some of them are, yes.

12 Q You would agree that copper, to the extent that's on
13 the list of items that might be contributing to the black water
14 problem in a given home, that's in the customer's home?

15 A Yes. We're not aware of any copper piping within the
16 distribution system or the plant at Aloha, the plants at Aloha.

17 Q And the hot water tanks and the sulphur reducing
18 bacteria, that's in the customer's home.

19 A Yes. The hot water tanks are in the customer's home.
20 Yes.

21 Q And the sulfur reducing bacteria that would
22 contribute to the problem is also in the customers' homes?

23 A Yes, that is correct, also. The sulphur reducing
24 bacteria does invade the homes and the piping in the homes, hot
25 water tanks and so forth.

1 Q And in your opinion all of these items are
2 interacting in some various form or fashion with elements in
3 Aloha's water?

4 A That -- Yes, that is our position.

5 Q And that element in Aloha's water is elemental
6 sulphur or sulfides.

7 A Yes.

8 Q Now DEP doesn't have a rule on the elemental sulfurs
9 or sulfides that are allowed in drinking water, do they?

10 A No. We do not have a maximum contaminant level. We
11 do not regulate that as a regulated contaminant. We do
12 regulate sulfates.

13 Q So DEP does have a rule for total sulfates?

14 A Correct.

15 Q And the constituent level that is allowed for total
16 sulfates is 250 MPL?

17 A Yes. That is correct.

18 Is it 250 or 160? I'd have to get the list to see
19 which it is, but I believe it's 250.

20 Q What did I say?

21 CHAIRMAN JABER: No one gets to help the witness, by
22 the way, just to --

23 MR. WHARTON: No. You get to help me. Oh, that's
24 right. You can't help me.

25 CHAIRMAN JABER: But the witness can take his time

1 and look up whatever answer he --

2 THE WITNESS: Well, I'm trying to remember this in
3 relationship to what EPA had proposed earlier in the decade
4 about changing the MCL for sulfates, and I believe they were
5 looking at even doubling it to allow up to 500 parts per
6 million. So that would make the 250 figure my recollection.

7 BY MR. WHARTON:

8 Q You would agree that if the highest MPL for Aloha's
9 wells has been measured at 16, that that, in fact, is well
10 within DEP's rules?

11 A Oh, yes. Yes. Certainly. We do not think in the
12 Aloha situation that sulfates is the issue.

13 Q And you would agree that, in fact, if the highest MGL
14 for Aloha's wells has been measured at 16, that that's a very
15 low level of sulfates in Aloha's wells?

16 A In comparison to other utilities, that's relatively
17 low. Yes.

18 Q So it's not the point of your testimony to say that
19 those sulfates shouldn't be in Aloha's water; correct?

20 A That is correct, if we, if we reach some agreement on
21 treatment. It would not be aimed at removing the total
22 sulfates from the raw water.

23 Q That's because DEP rules, in fact, do allow some
24 level of sulfates in water.

25 A That is correct, up to 250.

1 Q Now there's no movement right now that you're aware
2 of at DEP to lower that standard, is there?

3 A No.

4 Q And you would agree there's some utilities in the
5 State of Florida who's groundwater sources exhibit sulfates
6 that measure into the hundreds?

7 A We have a couple in the thousands.

8 Q And the sulfides are being created through a
9 conversion process in the customers' homes because of the
10 elements that we've been talking about; correct?

11 A That's where we believe the conversion is occurring,
12 yes.

13 Q Now you would agree that you wouldn't have the black
14 water problem in Aloha's service area without copper corrosion;
15 correct?

16 A Obviously not, no.

17 Q Okay.

18 A The chemical is copper sulfide. So without copper,
19 you don't have it.

20 Q And it is your opinion personally and professionally
21 that going with plastic piping would cause an improvement in
22 these particular areas?

23 A Obviously without the copper by going to plastic
24 piping, yes, the problem would be alleviated for that
25 particular home.

1 Q So you would agree that the problem in Aloha's
2 service area could be eliminated if the copper piping was
3 replaced with CPVC?

4 A If you replaced all the homes with plastic, the CPVC,
5 yes, we do not believe there would be a black water issue.

6 Q Sir, you had testified about your opinion about the
7 cost-effectiveness of Aloha's proposal; correct?

8 A Yes. Your earlier proposal that looked at using two
9 or three centralized treatment facilities to deal with this
10 issue.

11 Q And you indicated that you didn't believe that would
12 be cost-effective?

13 A That is correct. I don't think there was enough
14 pencil sharpening on that particular proposal.

15 Q Now you would agree that before these plant projects
16 are undertaken there would need to be detailed analysis that
17 would take into account such matters as water chemistry?

18 A Correct.

19 Q And the state and local rules?

20 A Certainly.

21 Q And the EPA rules?

22 A Yes.

23 Q And all those things would need to be taken into
24 account for the system as a whole; correct?

25 A Yes. Regarding the rules you would even have to look

1 at the future rules that are coming down the pipe because
2 they're being passed by EPA on a yearly basis that deal with
3 organics, disinfection by-products, the groundwater and so
4 forth. All those things would have to be considered when you
5 constructed an alternative to address Aloha's water.

6 Q And you would agree that the type of detailed
7 engineering analysis that we're talking about might reveal that
8 the three plants that Aloha proposes are the most
9 cost-effective solution.

10 A Yes, it might.

11 Q Now you are not aware what the size and layout of
12 Aloha's well sites is such as would allow you to know whether
13 each and every one of those wells is landlocked?

14 A That is correct. I am not intimately familiar with
15 the configuration, location of the wells or the amount of land
16 available or adjacent lands that may be available to provide
17 additional space for treatment. I do not know that.

18 Q And you would agree that not having property
19 available in order to put in facilities changes or affects the
20 cost-effectiveness of the plants.

21 A Well, if you have physical land constraints, yes, you
22 would have to look at treatment alternatives that do not
23 require a great deal of land. Packed tower might become
24 extremely difficult, for example.

25 Q So that's something you would have to take into

1 consideration.

2 A Something you would have to take into consideration.

3 Q You mean that's something Aloha should take into
4 consideration?

5 A Yes. Uh-huh.

6 Q Okay. You would agree that there's information out
7 there that you could still learn in that regard that might
8 affect your belief that the kind of centralization of
9 facilities Aloha has proposed is not cost-effective.

10 A Are you asking me if I can, I still have things to
11 learn in life?

12 Q No. I guess I'm asking you how definitive your
13 opinion is.

14 A My opinion on this particular matter is fairly gross
15 in nature. And, yes, it would require a great deal more study
16 by us or our staff with knowledge about things that we've
17 discussed in order to, to have a more informed opinion.

18 Q But in terms of the types of details that you don't
19 know about that particular matter, if you were able to obtain
20 and learn those details, those might change your opinion in
21 that regard.

22 A Certainly.

23 Q Now the cost of facilities is not a permitting
24 criteria at DEP; correct?

25 A Not unless it's involved in receiving a state or

1 federal loan or grant through our SRF program.

2 Q And which is not applicable here, would you agree
3 with that?

4 A Not unless you apply for a state or federal loan or
5 grant.

6 Q Okay. Other than the kind of loans you just talked
7 about, you would agree that DEP doesn't do any kind of cost
8 benefit analysis of facilities like these during the permitting
9 process.

10 A No, I'm not aware that we do that.

11 CHAIRMAN JABER: Mr. Van, Mr. Hoofnagle, if I could
12 take you back one answer.

13 Mr. Wharton asked you if you agreed that the federal
14 and state loan program would apply, and you said not unless
15 they applied for it.

16 Does that mean the federal and state loan program
17 could cover, that utilities could apply for federal and state
18 loan programs?

19 THE WITNESS: No, I was not addressing your
20 eligibility at all. I was simply saying that if they were
21 eligible, that they would, their cost-effectiveness analysis
22 would be reviewed by our bureau that they would have to perform
23 on a variety of alternatives to see what was the most
24 cost-effective, and we could only fund or provide funds for the
25 demonstrated most cost-effective solution.

1 CHAIRMAN JABER: And are you aware of the eligibility
2 requirements?

3 THE WITNESS: My understanding -- I have not worked
4 in that particular bureau for ten years, although I did work in
5 that area for 12 to 15 years of my life, but my understanding
6 right now regarding the eligibility is that a utility, private
7 utility of your size is not eligible at this time for grants or
8 loans under that program.

9 BY MR. WHARTON:

10 Q So you would agree then that it does not seem to be
11 applicable to this situation?

12 A In that case, yes. It does not seem to apply.

13 Q Now DEP doesn't have any positions or individuals
14 whose task is specifically to analyze the cost-effectiveness of
15 permit applications other than for those types of loans, do
16 they?

17 A I'm not aware they do that. I don't believe they do
18 that in the permitting process.

19 Q And you haven't analyzed this particular proposal
20 that Aloha has made for the three centralized plants and
21 compared it to alternatives for cost-effectiveness, have you?

22 A No, I have not compared it to alternatives.

23 Q You would agree that Aloha's engineers are the ones
24 who are aware of the details of the system?

25 A I would hope so. Yes.

1 Q And you agree that they are the ones who have
2 specifically undertaken the analysis of the best way to solve
3 this problem?

4 A Yes.

5 Q And to your knowledge DEP has not undertaken any type
6 of cost benefit analysis with regard to Aloha's proposal?

7 A I don't believe we have.

8 Q You talked a little bit in your testimony,
9 Mr. Hoofnagle, about the statutory change. Now the department
10 is currently contemplating going to rule making on that recent
11 change in the law; correct?

12 A Correct.

13 Q When do you think that will happen?

14 A We've been relatively poor at meeting deadlines even
15 though they're self-imposed. Our hope at present is that we
16 can adopt those changes around July of this year. We are
17 looking to a public workshop in late March with publication in
18 the Florida Administrative Weekly in May with final adoption in
19 July.

20 The particular change that we're referring to,
21 discussing today is one among very many in the permitting rule.
22 There's over 150 to 160 changes. We anticipate any number of
23 those could be very highly controversial and delay
24 implementation. But if all goes well, we hope to have the new
25 regulation in place, like I say, around July.

1 Q Now the parameters aren't actually listed in the
2 statute. Is that something that the DEP hopes to promulgate by
3 rule?

4 A By rule we won't specifically identify all the
5 parameters. We will be making actually recommendations in the
6 rule about what we would encourage utilities to look at at
7 certain levels of hydrogen sulfide, pH and so forth. It would
8 still be incumbent upon the engineer to demonstrate that he
9 could avoid the black water issues or copper corrosion issues
10 in consumers' homes by his proposed method of treatment.

11 Q You would agree that that particular statutory
12 amendment only relates to new wells.

13 A Our rule making will. I think if the -- you know,
14 upon rereading it there is a, only a one-sentence change to the
15 statutes. There could be some interpretation as to how
16 extensive we would apply that. Our rule making effort is only
17 geared at new wells that are brought online because we are
18 capturing this requirement under our permitting provisions.
19 And there are only construction permits. We do not have
20 operational permits. So, in other words, it would not be
21 retroactive or require retrofitting of existing, existing
22 facilities.

23 Q In that regard it would only relate to new wells?

24 A Yes.

25 Q Okay. As part of your preparation for your testimony

1 you recently checked on the status of the Seven Springs
2 facility in terms of its compliance, didn't you?

3 A Yes, I did.

4 Q And you learned that it was in compliance with the
5 applicable regulations?

6 A At the present time it is in compliance with the
7 state and federal regulations.

8 Q Now you've indicated that aeration is something that
9 you can recommend at this particular point which you believe
10 may solve the problem?

11 A That was the recommendation that came out of the work
12 group from the Interagency Copper Pipe Corrosion that aeration
13 would be the most appropriate form of treatment.

14 Q But you would agree that whether or not aeration will
15 solve this particular problem in the Aloha area would be
16 dependent upon a myriad of engineering questions, financial
17 feasibility questions, biochemistry questions, et cetera?

18 A Right. When we write the particular rule, it will
19 basically direct the applicant to prepare either an engineering
20 study showing how he anticipates handling the problem, and he
21 certainly could do it through other treatment processes other
22 than aeration, and it would be based upon things like water
23 chemistry and cost-effectiveness and so forth. But that in
24 lieu of him doing such an engineering study, which many of our
25 very small utilities like mobile home parks and so forth are

1 not going to contract with large consulting firms to prepare
2 such studies, we would require them to go directly to aeration.
3 And the type of aeration would be pretty much based on the
4 amount of H₂S found or measured in their raw wells.

5 Q In terms of the types of study that might need to be
6 undertaken before a project like that was started, you would
7 agree that what might work even for a neighboring utility might
8 not be optimal for Aloha.

9 A That's correct. That's one of the great frustrations
10 about this whole issue that's gone on for five years that it's
11 a very sophisticated and complex water chemistry issue.

12 Q Okay. In your opinion -- well, let me ask it this
13 way. You would agree the types of things that are going to
14 need to be implemented to address these concerns for Aloha are
15 going to cost money.

16 A Yes.

17 Q And, in fact, going to packed tower aeration is much
18 more effective than forced draft or tray aeration and it's also
19 much more expensive; correct?

20 A That's correct.

21 Q Just one moment.

22 (Pause.)

23 MR. WHARTON: Madam Chairman, may I approach the
24 witness?

25 CHAIRMAN JABER: Yes.

1 BY MR. WHARTON:

2 Q Mr. Hoofnagle, have you ever seen this particular
3 report before, which is entitled, Final Report Analysis For
4 Removal Of Hydrogen Sulfide - S. K. Keller Water Treatment
5 Plant?

6 A No, I'm not, I'm not familiar with this document.

7 Q Do you know where the S. K. Keller Water Treatment
8 Plant is?

9 A No.

10 Q Okay. Would you agree, subject to check, it's in
11 Pinellas County?

12 A Fine.

13 Q Okay. Do you not know anything about the recent
14 Pinellas County project on this plant in terms of how much they
15 spent or what they did for --

16 A No, I'm not familiar with that project that is before
17 Pinellas County. Sorry.

18 MR. WHARTON: Okay. That's all I have.

19 CHAIRMAN JABER: Thank you, Mr. Wharton.

20 Mr. Hoofnagle, let me ask you just a few follow-up
21 questions from some of the customer testimony we heard this
22 morning and then again later this afternoon to make sure the
23 record is complete.

24 There was a lot of testimony with respect to black
25 water coming out of the fire hydrants when they're flushed.

1 And if, if, as you say, the, the black water situation is
2 caused by the hydrogen sulfide reacting to the copper in the
3 home, how do, how can we explain the hydrant having black
4 water?

5 THE WITNESS: Well, we're talking about black water
6 with a capital B versus just discoloration of water that
7 appears to be darker black or gray.

8 Flushing programs by utilities are a common practice
9 to keep their lines clean. Hydrants are often located at
10 dead-ends and the water contained in the hydrant that when
11 they're opened it is certainly not uncommon that the water
12 comes out dark or black. The black water we're talking about
13 in regards to the Aloha problem, however, in the homes is a
14 chemical reaction involving hydrogen sulfide, copper, sulphur
15 reducing bacteria, temperature, time and so forth.

16 CHAIRMAN JABER: Okay.

17 THE WITNESS: So it is a copper product, but the
18 black water coming out of the hydrants we don't believe is.

19 CHAIRMAN JABER: You don't have an opinion on how
20 often the hydrants should be flushed, do you?

21 THE WITNESS: That varies tremendously. If, if
22 they're looped or if they're dead end or if -- it depends a lot
23 on the kind of disinfectant they use. If they use high levels
24 of free chlorine, it would be less often, if they use
25 chloramines. So it, the utility would have to look at their

1 own particular flushing program and they may have even within
2 that program increased flushing in certain areas and less so in
3 other areas.

4 CHAIRMAN JABER: Okay. It's not something then that
5 the DEP regulates or has rules on?

6 THE WITNESS: No. We encourage during surveys and so
7 forth, and if customer complaints come about, we do encourage
8 and ask utilities to flush their lines and usually they comply.

9 CHAIRMAN JABER: Okay.

10 THE WITNESS: It's a standard practice.

11 CHAIRMAN JABER: There was -- well, I think
12 Mr. Wharton just asked you about the replacement of the copper
13 piping in the home with plastic and whether that would
14 eliminate the black water problem.

15 My question is this. Absent replacing the copper
16 pipe in the home, what in your opinion would completely
17 eliminate the black water problem?

18 THE WITNESS: I don't think there's a panacea about
19 completely eliminating it, especially in the homes that already
20 are experiencing significant problems.

21 We do believe that effective aeration with pH
22 control, alkalinity or some other form of ion exchange or
23 perhaps some innovative processes coming on the market the
24 problem would be greatly reduced. In fact, we might even
25 disagree with the Sarah Jacobs contention that, that we would

1 think over time in even some of the existing homes would see a
2 significant reduction in the occurrence of black water.

3 CHAIRMAN JABER: Okay. There was also testimony this
4 morning that, alleging that Aloha has been in violation in the
5 past of DEP rules and regulations.

6 Could you clarify for me whether Aloha is in
7 violation of any DEP rules and standards, regulations or
8 consent orders?

9 THE WITNESS: I would have to defer more a definitive
10 response to that to our district representative who handles the
11 violation. The violation records that I saw that came off the
12 database indicated there were two blips back, I believe, in
13 '99. One was a permitting violation that was, we entered into
14 a consent order with the utility and they have complied is my
15 understanding. Additionally, I think one of their wells had an
16 exceedence of iron back about that time period.

17 There was discussion earlier about violations of the
18 Lead and Copper Rule. And, of course, this is an entirely
19 different conceptual type of rule in so many ways. In fact,
20 the use of the word "violation" or "exceedences" has to be sort
21 of spelled out.

22 We do have an MCL in the Lead and Copper Rule. What
23 we have is something referred to as action levels. An analysis
24 is done by sampling within homes and looking at the percent of
25 homes that are over an action level of 15 parts. I believe

1 it's 15 parts per billion. If a certain percentage of those
2 homes are over that level, the system is considered to be out
3 of compliance with, with that particular level. And an action
4 level means that they have to take action. It is not termed a
5 violation.

6 If then after they do exceed the percentages under
7 the rule they either refuse or inappropriately take actions or
8 they're too long in meeting the timeframes of taking actions,
9 that would result in a violation.

10 CHAIRMAN JABER: Is there any sort of guidance for me
11 to know when the company and the customers could see
12 improvement after packed tower aeration projects are
13 implemented? If this Commission were to order or mandate some
14 sort of packed tower aeration project, when should the
15 customers see improvement?

16 And I'm referring, for the benefit of the parties and
17 for your benefit, Mr. Hoofnagle, the customers wanted to know
18 when they could see change and I'd like to be able to give them
19 that answer. And I recognize that answer may depend on the
20 solution. But just as an example, if we used packed tower
21 aeration, when should they start to see improvement?

22 I don't know simply because if you're looking at, you
23 know, the construction of new homes, the problem should never
24 develop. Homes that already have significant levels of sulphur
25 reducing bacteria and problems existing within the home, it

1 might take a considerable period of time before there is
2 noticeable improvement. I just do not have a good handle on
3 what those timeframes would be. I think perhaps the
4 information might be available, but I don't have it.

5 CHAIRMAN JABER: Okay. Commissioners, do you have
6 any follow-up?

7 COMMISSIONER PALECKI: Yes, I have similar follow-up
8 questions based upon what we heard from the customers. And one
9 of those relates to the water that was coming out of the
10 hydrant that was discolored, but you stated that's not black
11 water, that's just a problem where you get towards the end of
12 the water line you sometimes have a buildup of particulates.
13 What would that be that causes that discoloration?

14 THE WITNESS: Well, a lot of maturing distribution
15 pipes do develop a film and it can be a colored film. When
16 they open a hydrant, it creates quite a violent or turbulent
17 flow within the lines and you find a lot of sloughing. That is
18 the purpose, to basically strip the pipes in the area and to
19 remove the film that has developed in pipes, which is quite a
20 natural phenomena, especially with chloramine systems.

21 COMMISSIONER PALECKI: If a customer was located near
22 the end of one of those lines, that would mean that, that that
23 water, that discolored water would enter their homes, also;
24 correct?

25 THE WITNESS: I wouldn't think necessarily so because

1 he has a continual flow of water coming into his particular
2 home. A dead end -- he's not -- he may be on a dead end line
3 but where he's drawing water from, there would be constant
4 flow. He may have a little bit more of a problem than somebody
5 else in the loop, but it wouldn't be of, of that particular
6 quality that you'd see out of a hydrant. You wouldn't have the
7 sloughing action and you would also have more of a flow regime
8 going into his home.

9 COMMISSIONER PALECKI: We had one customer who had a
10 filtering system in his home and he stated that at this time
11 it's about 15 feet inside the home, which would mean the water
12 would be reacting to 15 feet of copper, but he testified that
13 for several years he had the filter directly where the water
14 pipe came into the home so that there was no reaction with the
15 copper before it went through the filtering system. And his
16 testimony was that he had a real problem with sludge and
17 particles building up inside the filter even when there was no
18 reaction with copper. What could that be caused by?

19 THE WITNESS: I'm not sure. It would be interesting,
20 if he left his sample here, to do an analysis to see if it was
21 copper sulfide.

22 COMMISSIONER PALECKI: Now if there was a severe
23 buildup within the company's pipes, as you've just testified
24 that there, you know, there can be a need for the sloughing of
25 the pipes, is there any other solution to that problem that

1 might clean the inside of those pipes more thoroughly than just
2 opening up the, the hydrants on occasion?

3 THE WITNESS: Well, opening up the hydrants is
4 certainly the easiest and cost-effective thing to do even
5 though it does result in a loss of water. I suspect severely,
6 severe problem pipes could be pegged. You could actually dose
7 high dosages of chlorine in order to activate removal. I'm not
8 sure that's generally practiced though. I'm not sure what
9 Aloha's practices are other than the flushing.

10 COMMISSIONER PALECKI: Have you ever seen any
11 circumstances where a company's, the interior of their pipes
12 becomes extremely problematic to the point that it does make
13 the water unpalatable?

14 THE WITNESS: Well, not unpalatable. But it's not
15 uncommon with chloramine systems that are now springing up and
16 down the south coasts of Florida. Chloramine is a different
17 form of chlorination where chlorine is mixed with ammonia and
18 provides, it prevents the formation of THMs. It's addressing
19 that issue. But it does have its own problems including
20 promoting growth on pipes.

21 And what we generally see with chloramine systems is
22 that a utility will announce to the public that they're going
23 to spend the next week or so switching to free chlorine and
24 that they may see some water quality degradation during that
25 period of time because of the sloughing and so forth.

1 COMMISSIONER PALECKI: Now on page six of your
2 testimony you state that the black water problems do not appear
3 in all of Aloha's service subareas. And I think that's very
4 consistent with what we heard from the customers, that there
5 are specific neighborhoods that seem to be more prone to the
6 black water problems.

7 How would, and just generally, not very specifically,
8 but generally how would you design an aeration system to
9 address a problem that exists just in certain neighborhoods?

10 THE WITNESS: The Aloha configuration or system is
11 very similar to many in Florida, especially systems that have
12 grown over the years and grown significantly like the City of
13 Tallahassee or even Pensacola in which water is very minimally
14 treated. All they really do is add chlorine. This isn't brain
15 surgery. They just add chlorine, which is a minimum
16 requirement. So the customers are receiving water really
17 pretty much straight out of the ground with chlorine added, and
18 perhaps in this case they've also added an orthophosphate or an
19 aquamatic or some sort of inhibitor for the copper corrosion.

20 When you have a problem in certain areas or subareas
21 or developments, you would have to take a look at what wells
22 were predominantly feeding or serving those particular areas.
23 And if you could note areas that had significant problems while
24 other areas did not, it might lead you to the conclusion that
25 you could limit your treatment to certain wells or groups of

1 wells rather than the whole system. And that was part of my
2 contention between not agreeing that the most cost-effective
3 solution was a centralized treatment.

4 Given the fact that we do have additional rules and
5 regulations coming down and that I am not intimately familiar
6 with that configuration, that my opinion may, of course, not be
7 true because it is, after all, an opinion.

8 But in Tallahassee, for example, when we had
9 contamination problems isolated in certain parts of the city,
10 they put treatment, carbon filters on only certain wells in
11 place rather than redesign the system and go to a major
12 centralized facility.

13 COMMISSIONER PALECKI: Also on page six of your
14 testimony you talk about some other technologies that might be
15 considered such as the MIEX system. Could you tell us a little
16 bit about what the MIEX system is?

17 THE WITNESS: I'm not that familiar with the MIEX
18 system. We had one of our engineers go down to an area, I
19 believe it was in Pasco County, it was just a few blocks from
20 the Aloha service area called Little Plant or Little River Road
21 Plant or Little Road Plant. They were doing a demonstration of
22 the MIEX.

23 This is a process that's been developed by Australian
24 engineers in an Australian firm, and they were, they were here
25 in Florida trying to promote this particular system. It's

1 basically an ion exchange system is my understanding of it and
2 it was primarily developed to remove organics. But I think
3 what they have discovered is that it has other residual
4 benefits including removal of hydrogen sulfide and may be, may
5 be rather effective in this particular case or in Aloha's
6 situation. It's something I think, in fact, Aloha is looking
7 at.

8 COMMISSIONER PALECKI: Were you here when Dr. Kurien
9 testified this morning?

10 THE WITNESS: No. I arrived at 2:00 today.

11 COMMISSIONER PALECKI: He mentioned the system that's
12 being used by Pasco County and he said that they use three
13 separate technologies: Aeration, I believe filtration and then
14 a bacteria that was, I guess it was a sulphur eating bacteria.
15 Are you familiar with the Pasco County system?

16 THE WITNESS: I'm -- no, I am not familiar especially
17 on the third part of that. I mean, obviously with aeration
18 you, you quite often see pH adjustment and alkalinity control.
19 But the, the bacteria eating phenomena, I'm not familiar with
20 that.

21 COMMISSIONER PALECKI: Thank you very much.

22 THE WITNESS: Okay.

23 CHAIRMAN JABER: Redirect?

24 MR. JAEGER: Mr. Hoofnagle, I have just one question.
25 You referred to H₂S. That's the -- I'm over here.

1 THE WITNESS: Oh, okay.

2 MR. WHARTON: Chairman Jaber, I have a couple of
3 questions very specifically based on what you asked about the
4 law violation. Should I go before Mr. Jaeger so that he --

5 CHAIRMAN JABER: You know what, Mr. Wharton, let me
6 just set the stage for this right now. We're not doing
7 recross. We're not doing recross at the hearing.

8 MR. WHARTON: Even if the questions that you have
9 asked have, well, created a misapprehension on the record?

10 CHAIRMAN JABER: You're worried about confusion or --

11 MR. WHARTON: I think the witness has said something
12 that's incorrect.

13 CHAIRMAN JABER: Okay. Ask your question.

14 MR. WHARTON: He said we were a party to a violation
15 that we're not.

16 CHAIRMAN JABER: Okay. Ask your question.

17 MR. WHARTON: It was between DEP and a developer and
18 I can --

19 CHAIRMAN JABER: Ask your question. Ask your
20 question.

21 FURTHER CROSS EXAMINATION

22 BY MR. WHARTON:

23 Q Okay. Sir, you had, you had testified about a
24 violation and that was based on this memo that Robert Glenn
25 sent you?

1 A Yes. A permitting compliance violation.

2 Q Do you know whether or not that was actually a matter
3 that involved Evolutions Health Care Systems and Trinity
4 Commerce Park and did not involve Aloha?

5 A I would have to go back and review the OGC case file
6 on that to see who the parties were.

7 MR. WHARTON: May I approach very quickly?

8 CHAIRMAN JABER: Sure.

9 THE WITNESS: I would prefer that resolution of that
10 particular issue be done by the district office, who would be
11 party to have performed the consent order and would have
12 intimate knowledge about the consent order.

13 BY MR. WHARTON:

14 Q Well, let me ask you a question then. Would you
15 agree that this letter that I'm showing you on DEP letterhead
16 that is written from, written by Debra --

17 A Getzoff.

18 Q -- Getzoff of your office says, subject for
19 post-settlement of Evolutions Health Care System versus Trinity
20 Commerce Park, and it has the same OGC case number as does the
21 memo that Robert Glenn sent you?

22 A Yes, it does have the same OGC case number.

23 Q And you would agree that in the "re" of this
24 particular letter Aloha is not mentioned and this letter does
25 not appear to be to Aloha.

1 A The letter does not appear to be to Aloha, but I
2 haven't read the letter.

3 Q But you would agree that it appears the style of the
4 case is Evolutions Health Care Systems versus Trinity Commerce
5 Park.

6 A Yes, that's --

7 Q Would that be consistent with a developer who had
8 turned on the system before DEP approval?

9 A I'm not familiar with the details. I'm sorry.

10 Q Okay.

11 A I do think Gerald Foster, who will come after me,
12 will probably have more information about the enforcement on
13 that particular case.

14 What I have is our DEP database that brings up a
15 system, a PWS system, and whether or not there are violations
16 associated with that system. It does not mention the parties
17 to that violation.

18 Q Would a violation that was considered by DEP to be
19 associated with the system include a violation such as I have
20 described, one between, by a developer against DEP's rule?

21 A Quite often, and I, again, I cannot talk the
22 specifics of this, but quite often what you do see are permits
23 submitted to our agency by developers, home builders and so
24 forth to add a line or add, you know, additional distribution
25 into a utility's system.

1 Generally, of course, the utility is a party to that
2 permit. If the issue was that they put something into service
3 without clearance, it is certainly something that a developer
4 could do without the knowledge or concurrence of a utility.
5 And I just, I'm sorry, I do not know the specifics of that
6 particular case to, to know other than to agree with you what
7 the letterhead says there.

8 Q Is it fair to say --

9 (Simultaneous conversation.)

10 CHAIRMAN JABER: Mr. Wharton. Mr. Wharton. Mr.
11 Wharton. First of all, you need to get right next to a
12 microphone and talk.

13 Second, I think we can nip this in the bud by asking
14 DEP, and I don't care which witness does it, Mr. Hoofnagle, I
15 want to know because some customers testified with respect to
16 whether there are existing violations against Aloha from DEP.
17 So how about a late-filed exhibit at my request for -- I just
18 want to know are there existing DEP violations, has Aloha
19 violated any existing DEP rules, standards, procedures and, if
20 so, what are they?

21 THE WITNESS: Well, I am not aware of any violations
22 at this time.

23 CHAIRMAN JABER: Okay.

24 THE WITNESS: Like I said, there were two instances.
25 He -- Attorney's countering of whether or not they're actually

1 party to the '99 permit violation, they may or may not be. It
2 doesn't appear that they are. And then there was a short-term
3 iron violation.

4 CHAIRMAN JABER: Okay.

5 THE WITNESS: And back on the lead and copper, I am
6 not aware of any violations unless they missed a timeframe by a
7 short period of time. But they did exceed an action level and
8 took the appropriate actions to add the inhibitor. Otherwise,
9 I'm unaware of any violations.

10 CHAIRMAN JABER: All right. Take the next two weeks
11 and I'll have Mr. Jaeger work with you and Gerald, I'm sorry,
12 I've forgotten --

13 THE WITNESS: Foster.

14 CHAIRMAN JABER: -- Mr. Foster, and get us a formal
15 exhibit answering that question.

16 And the listing, Mr. Jaeger, a listing of past
17 violations and the status of the resolution would be very
18 helpful. That way, Mr. Wharton, you can respond to the
19 late-filed exhibit.

20 MR. JAEGER: How far did you want to go back,
21 Chairman?

22 CHAIRMAN JABER: How about 1994 to the present.
23 Because I think the reference you made, Mr. Hoofnagle, was
24 1994?

25 THE WITNESS: Well, the Lead and Copper Rule kicked

1 in, I believe, in '93. When their exceedence was was probably
2 around that time period, but I can't identify even specifically
3 the year, whether it was '94, '95, '96.

4 CHAIRMAN JABER: Let's make it easy. Let's do a
5 ten-year, a good ten-year time span, Mr. Jaeger. So how about
6 1990 to present.

7 All right. Let me tell the parties that the
8 Commissioners will be asking questions. They will probably be
9 follow-up from what we've heard from the customers. I will not
10 start doing recross. We're not. You have an opportunity to
11 file briefs, you have an opportunity to do the very same thing
12 we're doing. If you want to follow up about a question that
13 was identified from a consumer, you're welcome to do that.

14 Redirect.

15 REDIRECT EXAMINATION

16 BY MR. JAEGER:

17 Q Just one question. You referred to H2S. That's
18 hydrogen sulfide, the chemical designation?

19 A Yes.

20 MR. JAEGER: And I would move Composite Exhibit 1.

21 BY MR. JAEGER:

22 Q And I think Ms. Jaber said within two weeks we'll get
23 something together on that.

24 A Yeah. I'll have to work -- I'm only concerned that
25 our database, our district files may not be as complete as we

1 would like back in 1990, but we'll do the best we can.

2 CHAIRMAN JABER: Thank you. That would be late-filed
3 Exhibit 2.

4 (Late-Filed Exhibit 2 identified.)

5 THE WITNESS: Once we put this together, who would we
6 send it to?

7 MR. JAEGER: I'll work with you.

8 CHAIRMAN JABER: Mr. Jaeger will file it for you and
9 make sure that all the parties receive a copy.

10 Any other redirect, Mr. Jaeger?

11 MR. JAEGER: No, Commissioner, Chairman.

12 CHAIRMAN JABER: Thank you. Mr. Hoofnagle, thank you
13 for your testimony.

14 THE WITNESS: Thank you.

15 CHAIRMAN JABER: You may be excused.

16 (Witness excused.)

17 CHAIRMAN JABER: It is --

18 MR. JAEGER: Chairman Jaber --

19 CHAIRMAN JABER: Yes. Go ahead.

20 MR. JAEGER: I know it's pretty late and I think
21 Mr. Foster had indications that his cross would be short at
22 least from the utility. I'm not sure about OPC. But I'm not
23 sure how much cross-examination we'll have of Mr. Foster.

24 CHAIRMAN JABER: Now, Mr. Jaeger, my preference is
25 not to take up anymore witnesses on the technical side. I want

1 to hear Mr. Wharton's motion and then we'll take a break before
2 the 6:00 p.m. service hearing.

3 Mr. Wharton, you said that you had a motion you
4 wanted to make?

5 MR. WHARTON: I do, Madam Chairman.

6 Commissioners, I know that the entire Commission was
7 involved in the Intercoastal case and it has been my
8 observation from this Commission, and the Commission obviously
9 always turns over in personnel, but this Commission is willing
10 to look at things and determine whether, just because they have
11 done them in the past, whether those things should necessarily
12 continue to be done. I know we talked about official notice
13 in the, of appellate decisions and what it really means and
14 y'all had Harold write a memo, I think, and we talked about
15 late-filed exhibits and subject to check.

16 We want to move to reconsider at this time that
17 portion of the prehearing order which determined that Aloha
18 should present its direct testimony and its rebuttal testimony
19 at the same time. I'm not casting any aspersions at all on
20 Commissioner Palecki because we did not make that detailed of
21 an argument at that time because the draft prehearing order had
22 not contemplated that and we were not prepared to do so. I
23 also know that Commissioner Palecki is someone who's had
24 substantial experience in the Commission and that that's a
25 process that he was probably familiar with.

1 I want to also suggest that because the way the
2 prehearing order is set up that we can ask, we can justify
3 witness by witness whether that is not appropriate, but I also
4 want to make that motion right now. Because sometimes I've
5 heard the Commissioners say I kind of agree with you but the
6 motion for reconsideration is so narrow. So I'm doing this ore
7 tenus motion on both fashions. It's a motion for
8 reconsideration. It's also a motion that we don't want to do
9 that and we believe that it's going to prejudice us.

10 CHAIRMAN JABER: Mr. Wharton, let me ask for some
11 clarification. Give me the history. I assumed, frankly, that
12 you asked for testimony, direct and rebuttal testimony to be
13 taken up at the same time.

14 MR. WHARTON: No. And we would very much prefer not
15 to do it that way. And I would think, Commissioners, with all
16 the questions you're asking, you'd rather have our guys up
17 there on Friday after you've heard from the Water Management
18 District, DEP. I mean, if I don't --

19 CHAIRMAN JABER: Mr. Wharton, I think this is much
20 easier than you're about to make it, so let me, let me --

21 MR. WHARTON: Yeah. I'm willing to --

22 CHAIRMAN JABER: Did anyone ask for direct and
23 rebuttal to be taken up at the same time?

24 MR. WHARTON: (Nods negatively.)

25 CHAIRMAN JABER: Okay. So what you're saying is the

1 prehearing order when it was issued reflected that that
2 testimony would be taken up together?

3 MR. WHARTON: Correct.

4 CHAIRMAN JABER: Mr. Jaeger, can you confirm that?

5 MR. JAEGER: Yes, Chairman. I think Commissioner
6 Palecki just asked, he thought it would be more cost-effective
7 and just make for more efficient operation of the hearing. And
8 I think basically, like John said, I wasn't familiar and since
9 then I've done some research, and generally if parties agree to
10 it, then that's the way we do it a lot of times. But if they
11 don't want to, I think generally we've said, okay, we will do
12 it the other way.

13 CHAIRMAN JABER: Right. Right.

14 MR. JAEGER: But it is, I think, up to your
15 discretion or the panel's discretion to do it, you know, for
16 the expeditious handling of this proceeding.

17 CHAIRMAN JABER: Let me just tell you, Mr. Wharton, I
18 do believe it's more efficient to take up direct and rebuttal
19 at the same time, but I absolutely do not want to force that
20 issue. So we will separate direct from rebuttal. And let's go
21 through the order right now so that we are all clear on what we
22 have to look forward to tomorrow.

23 MR. WHARTON: I believe it would not change the
24 order⁷³ of our witnesses as reflected in the prehearing order
25 because it is the same witnesses who filed direct.

1 CHAIRMAN JABER: Right. So what you're saying is
2 Mr. Porter has filed direct and rebuttal, as has Nixon, as has
3 Watford?

4 MR. WHARTON: Correct.

5 CHAIRMAN JABER: All right. Mr. Burgess, you have
6 Mr. Biddy, Mr. Stewart, and my copy shows that those are direct
7 witnesses.

8 MR. BURGESS: Correct. Along with Mr. Larkin and
9 Ms. DeRonne.

10 CHAIRMAN JABER: All right. So really in terms of
11 rebuttal we are only talking about Aloha.

12 MR. JAEGER: That's correct, Chairman. The first
13 three listed there.

14 CHAIRMAN JABER: Okay. All right. Anything else,
15 Mr. Wharton?

16 MR. JAEGER: We have Deterding. That's only
17 rebuttal.

18 MR. WHARTON: No, ma'am.

19 CHAIRMAN JABER: Mr. Burgess?

20 MR. BURGESS: This, this makes it to where I think I
21 need a clarification on my cross-examination now.

22 Company's direct testimony really does not address in
23 their testimony a lot of issues; however, they sponsor all of
24 the filings through the testimony from which the issues derive.
25 And so I guess what I'm trying to find out is whether I would

1 be prohibited from asking questions in cross-examination of
2 direct testimony to a witness that, that has sponsored an MFR
3 that gives rise to an issue that, that we're raising simply
4 because the, that witness's testimony verbiage doesn't address
5 it in direct but rather addresses our witness's statement about
6 it in cross.

7 CHAIRMAN JABER: In rebuttal?

8 MR. BURGESS: I mean in rebuttal. Excuse me.

9 CHAIRMAN JABER: No. I understand, I understand your
10 point. But can we address that -- as I was reviewing the case
11 last night, it occurred to me that the easiest way to handle
12 that situation would be to identify all the MFRs at once,
13 Mr. Wharton, as a composite exhibit. And that's, in fact, how
14 we've done it in the past.

15 And as it relates to addressing an exhibit that
16 hasn't been admitted into evidence, you're welcome to present a
17 copy of that exhibit to the witness and cross-examine or
18 impeach the witness on that exhibit even though it is not in
19 evidence.

20 And I've also seen parties admit that exhibit into
21 evidence even though it's not theirs. But you ask for it to be
22 identified and you just don't move it in until the witness is
23 up on the stand.

24 MR. WHARTON: We would have no objection to that
25 because that peculiarity will arise tomorrow. The exhibit

1 actually doesn't come in until our second witness, but we would
2 have no objection because Porter also sponsored part of the
3 MFR. Thank you.

4 CHAIRMAN JABER: We'll be flexible in that regard.
5 Anything else, Mr. Wharton?

6 MR. WHARTON: No, ma'am.

7 CHAIRMAN JABER: Mr. Jaeger?

8 MR. JAEGER: Chairman Jaber, I had one thing I had
9 talked to you about this morning. Staff had propounded some,
10 you know, a third set of interrogatories to the utility on
11 December 5th, which would have made the responses due on
12 January the 4th, 30 days. We delivered them by hand. And when
13 we didn't get them, I tried calling on Tuesday but the utility
14 attorneys had already left to come down to the hearing. And I
15 was advised this morning that they do not think they have to
16 respond to those interrogatories because the responses were two
17 days after the discovery cutoff. But we think that the --

18 CHAIRMAN JABER: Wait a minute. You served, you
19 served the discovery before the discovery cutoff period, but
20 the responses --

21 MR. JAEGER: It was 28 days.

22 CHAIRMAN JABER: Okay.

23 MR. JAEGER: And we think basically the order
24 establishing procedure says if you're going to object, and I
25 think this is an objection as them being untimely, they would

1 have to object in ten days, in which case I would have moved
2 for an expedited response instead of giving them 30 days, give
3 them 28 days to respond. So I think if they were not going to
4 answer these interrogatories, they should have objected within
5 that ten-day timeframe. So Staff requests that they respond.
6 There's four interrogatories and we think they should be made
7 to respond to those.

8 CHAIRMAN JABER: Mr. Wharton?

9 MR. WHARTON: Madam Chairman, first of all, it's not
10 an objection. It's unauthorized discovery. What does the --
11 what the order says is discovery shall be completed. That's
12 what the order says. And what does the discovery cutoff mean?
13 It's where you don't have to mess with discovery right before
14 trial, you've got to conduct your activities accordingly. And,
15 frankly, they had these three guys in deposition last Thursday
16 for the third time in this case for all three of them. They
17 could have asked them questions them.

18 CHAIRMAN JABER: Mr. Wharton, Mr. Wharton, you have
19 until 10:00 Friday to respond to those four questions.

20 MR. WHARTON: We'll respond to them.

21 CHAIRMAN JABER: Anything else? All right. We're
22 going to break until 6:00 p.m. We'll reconvene for the
23 customer service part.

24 (Transcript continued in sequence with Volume 3.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, LINDA BOLES, RPR, Official Commission
6 Reporter, do hereby certify that the foregoing proceeding was
7 heard at the time and place herein stated.

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

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

18 DATED THIS 22nd DAY OF JANUARY, 2002.

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LINDA BOLES, RPR
FPSC Official Commissioner Reporter
(850) 413-6734