

State of Florida



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

**DATE:** June 17, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Gervasi, Jaeger) *PS RDD Malt*  
Division of Economic Regulation (Walden, Daniel, Kummer, Willis) *W*  
Office of Standards Control & Reporting (Lowery) *RNT*

*RR JDJ*

**RE:** Docket No. 020896-WS – Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.  
County: Pasco

**AGENDA:** 06/29/04 - Regular Agenda - Proposed Agency Action on Issue 4 - Oral Argument Requested on Issue 3 - Interested Persons May Participate on Issues 4 – 7

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\020896.RCM.DOC

### Case Background

Aloha Utilities, Inc. (Aloha or utility) is a water and wastewater utility providing service to approximately 14,000 customers in Pasco County, including approximately 11,000 customers in the Seven Springs area. The Seven Springs area, which includes Riverside Villas, has a continuing problem with odor and black water caused by the presence of hydrogen sulfide.

This recommendation involves both (a) the implementation of potential solutions to the odor and black water problem in light of an independent audit financed by the Office of Public Counsel, and (b) the handling of two petitions for deletion of territory and other relief (the “deletion petitions”) filed by customers in Seven Springs. The parties to the deletion docket,

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Docket No. 020896-WS, include Aloha, the Office of Public Counsel (OPC), and Aloha customers Dr. Kurien, Mr. Wood, Mr. Hawcroft, and Dr. Gaul.<sup>1</sup>

### Black Water Problem and the Rate Case Order

The Commission addressed Aloha's black water problem in Order No. PSC-02-0593-FOF-WU (the "rate case order") issued on April 30, 2002 in Docket No. 010503-WU, Aloha's most recent rate case docket. The rate case order contained an extensive discussion of the black water issue and ordered Aloha to take specific steps to address the problem<sup>2</sup>:

- Hydrogen sulfide naturally occurs in much of the source water for Florida's utilities. The black water problem is not unique to the customers of Aloha and does occur in other areas of Florida.
- Hydrogen sulfide in Aloha's source water is converted to sulfates by chlorination.
- Copper sulfide (black water) occurs when elemental sulfur or sulfate in the water is converted biochemically in the customer's home from harmless sulfate and elemental sulfur back into hydrogen sulfide.
- Aloha's water contains very small quantities of sulfate as it is delivered to the customer – at most one-tenth of the national limit.
- Aloha meets the drinking water standards set forth by the Department of Environmental Protection (DEP) for water quality, and the black water is created beyond the meter. Therefore the quality of Aloha's product is satisfactory.
- The method that Aloha has chosen to comply with DEP's water quality rules – the conversion of sulfides to sulfates through chlorination – has not proven to be an adequate remedy. Aloha should take a more proactive approach to dealing with the black water problem.
- For those customers experiencing black water, the only absolute fix appears to be to replace existing copper pipe with chlorinated polyvinyl chloride (CPVC) piping.
- Another possible solution to address the black water problem is the removal of almost all hydrogen sulfide.
- Aloha is required by December 31, 2003 to implement a treatment process for all its wells that is designed to remove at least 98% of the hydrogen sulfide in the

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<sup>1</sup> Dr. Kurien caused the first deletion petition to be filed. The Commission granted intervention to the other parties by Order Nos. PSC-02-1274-PCO-WS (Office of Public Counsel), PSC-02-1504-PSC-WS (Mr. Wood), PSC-04-0308-PCO-WS (Mr. Hawcroft) and PSC-04-0309-PSC-WS (Dr. Gaul).

<sup>2</sup> **Attachment A** contains the full text of Section III and Section IV.A.1 of the rate case order, which deal with the black water issue.

raw water. The improvements must start with Wells No. 8 and 9, which have the highest hydrogen sulfide concentration in the raw water.

- Aloha is required to submit an action plan by July 30, 2002 showing how it intends to comply with this requirement (the “action plan”).

Aloha appealed the rate case order and, on August 5, 2002, the Commission granted a partial stay pending appeal.<sup>3</sup> The requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed. The First District Court of Appeal affirmed the rate case order. The Court subsequently denied Aloha’s request for reconsideration on June 12, 2003. The new date to implement the 98%-reduction solution thus became February 12, 2005.<sup>4</sup> The Court’s mandate issued on June 30, 2003.

### The Deletion Petitions

On July 18, 2002 – after the rate case order was appealed, before the partial stay was granted, and almost a year before the Court’s mandate issued – Dr. Kurien filed a petition signed by 1,491 residents from 1,314 households located in Seven Springs. That petition asked that:

- The required action plan be approved (i) only after an independent audit of Aloha’s processing plant and methodology, (ii) only if the action plan contains the minimum requirements imposed by neighboring utilities for raw water processing, and (iii) only if a Citizens’ Advisory Committee is created to monitor the effectiveness of the plan.
- The implementation date for treatment improvements be accelerated from December 31, 2003 to April 30, 2003.
- If significant resolution of the problems does not occur by June 30, 2003, the Commission “sequester the Seven Springs Area from Aloha Utilities and make it part of the service area of Pasco County water utility system.”

The Commission held action on this petition (the “first deletion petition”) in abeyance from December 9, 2002 to March 8, 2004.<sup>5</sup> On December 11, 2003, while the docket was in abeyance, a separate petition was filed by 218 customers in the Riverside Villas portion of Seven Springs (the “second deletion petition”). The second deletion petition asked the Commission to alleviate the water quality problem by “allowing us another choice of a water provider.”

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<sup>3</sup> Order No. PSC-02-1056-PCO-WU.

<sup>4</sup> On July 29, 2003, Aloha requested a 100-day extension to the new February 12, 2005 deadline. The Commission denied that request as premature by Order No. PSC-03-1157-PCO-WU, issued October 20, 2003.

<sup>5</sup> Order No. PSC-02-1722-PCO-WS (issued December 9, 2002) held the case in abeyance pending conclusion of the appeal. Order No. PSC-03-0325-FOF-WS (issued March 6, 2003) denied requests by Dr. Kurien and Mr. Wood for reconsideration of the abeyance order. Order No. PSC-04-0254-PCO-WS (issued March 8, 2004) removed the docket from abeyance.

Aloha filed timely motions to dismiss both deletion petitions. OPC and Dr. Kurien filed timely responses to the motion to dismiss the first petition. Dr. Kurien later filed a supplemental response to the motion to dismiss that Aloha has moved to strike. The motions to dismiss and motion to strike are still pending.

On June 9, 2004, Aloha filed a motion to modify the requirements of the rate case order in the rate case docket, requesting that the requirement to remove 98% of hydrogen sulfide from the raw water should be replaced with a requirement that Aloha make improvements to meet a goal of 0.1 mg/L (milligrams per liter) of sulfides in its finished water as that water leaves the treatment facilities of the utility, and that this standard be implemented no later than February 12, 2005.

### The Independent Audit

While the deletion docket was in abeyance, the Office of Public Counsel volunteered to conduct and finance the independent audit of Aloha's processing plant and methodology that had been requested by the first deletion petition. This audit was conducted by Dr. Audrey Levine of the University of South Florida. Dr. Levine's findings and conclusions are contained in a two-phased audit report. Phase I of the report was issued in August 2003 and Phase II was issued in February 2004. Phase II of the report identifies several potential treatment options, each of which may be effective in resolving the odor problem and the formation of copper sulfide in homes that do not already exhibit a black water problem. The report indicates that there is no guarantee that the use of either packed tower aeration or alternative disinfection can completely alleviate the black water problem.

### The Customer Service Hearings

In its March 8, 2004 order removing the deletion docket from abeyance, the Commission scheduled customer service hearings to obtain the customers' views on Dr. Levine's audit report and the implications of its findings. Two customer service hearings were held in New Port Richey on April 8, 2004. Approximately 200 customers attended each session, and numerous customers testified at both sessions. The customers generally did not address the specifics of the audit report and the proposed treatment options. Instead, virtually all of the customers stated that they wished to be deleted from Aloha's service area in order to obtain service from Pasco County. Subsequent to the service hearings, approximately 365 customers have submitted comments stating that they wish to be deleted from Aloha's service territory and allowed to obtain service from Pasco County, including 88 customers who reside in Riverside Village Estates, Unit 4.

### Staff's Investigation

The order removing the deletion docket from abeyance directed the staff to fully analyze the findings of the audit report and the information gathered at the customer service hearing and to thereafter file a recommendation concerning the disposition of the deletion petitions and the pending motions to dismiss those petitions. Pursuant to this direction, staff has reviewed the audit report in detail, obtained additional information through data requests to Aloha, met with representatives of Pasco County, met with representatives of the SWFWMD, met with

representatives of DEP, and participated in two meetings with the parties. The following is a summary of the key results of that investigation.

A. Potential Treatment Technologies

Dr. Levine's report identified several potential options to modify the existing treatment system:

1. Packed tower aeration. Removal of hydrogen sulfide can be accomplished using packed tower aeration. Packed tower aeration is a physical/chemical treatment system in which a chemical is added to the water to reduce the pH (carbon dioxide or a mineral acid) and the hydrogen sulfide is transferred from the water to air. This process needs to be coupled with a gas scrubber to control the release of odorous compounds into the air. In addition, due to the potential for the packing material to become clogged from biological growth, there is a need for frequent maintenance and/or filtration.

2. Alternative oxidants. Alternative oxidants can be used to improve the consistency of hydrogen sulfide conversion reactions. The most likely candidate oxidants are hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) or ozone. The presence of iron in the source water can serve as a catalyst for this process. Supplemental control of pH may be necessary to ensure that the hydrogen sulfide is converted to sulfate. Another advantage of using alternative oxidants is that the chlorine demand of the water will be reduced allowing for more effective use of chloramination. In addition, the supplemental oxygen in the treated water will improve the taste of the water and help reduce the growth of anaerobic microorganisms in the distribution system.

3. Membrane technologies. Membrane technologies can be coupled with chemical oxidation to remove particulate forms of sulfur and improve water quality. The use of membrane processes requires a reliable energy source and a means for treatment/disposal of the rejected water.

It should be noted that while H<sub>2</sub>O<sub>2</sub> has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. The science suggests that it will be effective for that purpose; but the science has not been proven in a full-scale utility application.

B. Utility Analysis of Treatment Alternatives

Aloha's estimated capital and O&M costs for the various treatment options identified in Dr. Levine's report are listed below, along with an estimate of the associated rate impact. All of the costs are conceptual in nature and are subject to change as design and permitting occurs.

<b>Treatment Option</b>	<b>Conceptual Capital Cost</b>	<b>Conceptual O&amp;M Cost</b>	<b>Estimated Rate Impact</b>
Packed Tower Aeration	\$14,500,000	\$3,100,000	261.95%
H2O2 Oxidation – Rental	\$3,500,000	\$390,000	43.85%
H2O2 Oxidation – Purchase	\$4,000,000	\$340,000	44.40%
Ozone Oxidation	\$6,900,000	\$520,000	72.99%
H2O2 Oxidation/Membrane – Rental	\$11,800,000	\$580,000	108.09%
H2O2 Oxidation/Membrane – Purchase	\$12,300,000	\$530,000	108.64%

NOTE: The reason for the small difference in the cost between leasing or purchasing equipment is due to the small amount of equipment that could be leased. The leased equipment would be two chemical feed pumps and two storage tanks at each treatment plant site. The company would have to perform its own site work (including slabs and containment structures for tanks), and install its own on-site piping, instrumentation, switches and controls, and electrical modifications at each treatment plant.

Attachment B is Aloha's response to a staff data request, in which Aloha describes the advantages and disadvantages and associated costs of each of the treatment methods identified by Dr. Levine.

C. Other Factors

Aloha is currently withdrawing more raw water than is allowed under its consumptive use permits from the Southwest Florida Water Management District. In an effort to settle this matter, Aloha is in negotiations with Pasco County for a contract to purchase up to 1.5 million gallons per day (MGD) of treated water from the County.

Pasco County obtains water from its own wells and treatment facilities, as well as from purchases from the Tampa Bay Water Authority (Authority). Effective January 1, 2005, the Authority will change its disinfection treatment from the addition of chlorine to the addition of chloramines. Because these two disinfection processes are incompatible, Pasco County will also begin using chloramines effective January 1, 2005. In order to be in a position to purchase treated water from the County, Aloha must likewise change from chlorine to chloramines.

The forthcoming change to chloramines has two consequences:

- Given limited space at Aloha's well sites for additional treatment facilities, if H2O2 oxidation is chosen to address the removal of hydrogen sulfide, it is more efficient and cost-effective to design and construct the facilities for use of

chloramines and H<sub>2</sub>O<sub>2</sub> at the same time. In order to meet a January 1, 2005 in-service date, design and engineering needs to start immediately.

- Without the simultaneous installation of a treatment process, the problem of black water creation may worsen.

### Organization of Recommendation

This recommendation organizes the issues as follows:

- Issue 1: Should the Commission grant Aloha's Request for Oral Argument on its Motion to Dismiss (Issue 3)?
- Issue 2: Should the Commission grant Aloha's Motion to Strike the supplemental response filed by Dr. Kurien to Aloha's motion to dismiss?
- Issue 3: What action should the Commission take on Aloha's Motion to Dismiss the First Deletion Petition and its Supplemental Motion to Dismiss the Second Deletion Petition?
- Issue 4: Should the Commission grant Aloha's motion to modify the rate case order, to change the 98% standard for removal of hydrogen sulfide contained therein to agree with the Tampa Bay Water Standard of 0.1 mg/L?
- Issue 5: What additional steps should Aloha take to address the black water problem occurring in customers' homes?
- Issue 6: What further action should the Commission take at this time on the deletion petitions?
- Issue 7: Should the dockets be closed?

The Commission has jurisdiction pursuant to Sections 367.011, 367.045, 367.111, 367.121, and 367.161, Florida Statutes.

### Discussion of Issues

**Issue 1:** Should the Commission grant Aloha's Request for Oral Argument on its Motion to Dismiss (Issue 3)?

**Recommendation:** Yes. Because oral argument may aid the Commission in comprehending and evaluating Issue 3, staff recommends that oral argument be granted. Staff notes that interested persons are permitted to participate on Issues 4-7 in any event. Combined presentations on all issues should be limited to fifteen minutes per side. (Gervasi)

**Staff Analysis:** Aloha timely filed its Request for Oral Argument on September 5, 2002, concurrent with its Motion to Dismiss the first deletion Petition. Aloha states that oral argument will assist the Commission and the parties in understanding Aloha's arguments regarding the Commission's jurisdiction and the petitioners' standing in the deletion docket, and the interrelationship of the deletion docket with other pending matters, including the appeal of the rate case order and Aloha's Motion to Stay pending action by the First District Court of Appeal.

Aloha's Request for Oral Argument complies with Rule 25-22.058(1), Florida Administrative Code, which states that "[a] request for oral argument must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof."

Aloha's reason for oral argument concerning the interrelationship of the deletion docket with other pending matters is outdated given that the rate case order is no longer pending on appeal. Nevertheless, the issues surrounding the deletion petition are complex and staff believes that they merit oral argument. Because oral argument may aid the Commission in comprehending and evaluating the motions to dismiss, and because parties are permitted to participate on Issues 4-7 in any event, staff recommends that oral argument be granted. Combined presentations on all issues should be limited to fifteen minutes per side.

Staff notes that oral argument was not requested on Aloha's Supplemental Motion to Dismiss the second deletion petition. Because the issues raised in the Supplemental Motion to Dismiss also concern the Commission's jurisdiction and the petitioners' standing, oral argument would likely be relevant to the Supplemental Motion to Dismiss, as well.

**Issue 2:** Should the Commission grant Aloha's Motion to Strike the supplemental response filed by Dr. Kurien to Aloha's motion to dismiss?

**Recommendation:** Yes. The Commission should grant Aloha's Motion to Strike. (Gervasi)

**Staff Analysis:** On September 5, 2002, Aloha filed a timely motion to dismiss the first deletion petition. On September 17, 2002, OPC and Dr. Kurien filed timely responses to that motion. Subsequently, on November 4, 2002, Dr. Kurien filed a supplemental response to the motion to dismiss.

Aloha moved to strike Dr. Kurien's supplemental response on two grounds: first, Rule 28-106.204(1), Florida Administrative Code, requires any response to a motion to be filed within seven days of the service of the motion; second, there is no provision in that rule for the filing of supplemental or second responses.<sup>6</sup>

Staff agrees with Aloha that Dr. Kurien's supplemental response is untimely and is not permitted under the applicable rules. Staff therefore recommends that the Commission grant Aloha's motion to strike.

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<sup>6</sup> Aloha further requested that the Commission admonish Dr. Kurien that he represents only himself and that he should refrain from alleging otherwise or engaging in the unauthorized practice of law. By letter dated November 14, 2002, the Commission's then General Counsel advised Dr. Kurien of Rule 28-106.10, Florida Administrative Code (the "qualified representative" rule) and that he is in no way barred from continuing to actively represent himself in the docket. Since that time, Dr. Kurien has clarified that he represents only himself in this proceeding.

**Issue 3:** What action should the Commission take on Aloha's Motion to Dismiss the First Deletion Petition and its Supplemental Motion to Dismiss the Second Deletion Petition?

**Recommendation:** The Commission should dismiss for lack of jurisdiction the portion of the First Deletion Petition that requests that the Seven Springs territory be made part of the service area of the Pasco County water utility system. The Commission should deny the motions to dismiss the remaining portions of the two deletion petitions. (Gervasi)

**Staff Analysis:**

As stated in the Case Background, Aloha timely filed a motion to dismiss the first deletion petition and a supplemental motion to dismiss the second deletion petition. OPC and Dr. Kurien timely filed responses to the motion to dismiss. No party filed a response to the supplemental motion to dismiss.

Staff's analysis first identifies the three items of relief requested by the deletion petitions. Next, it discusses the appropriate standard of review for the motions to dismiss. Staff then addresses the motions to dismiss in the context of each of the three items of relief. These recommendations take into account the current posture of the case, which has changed significantly since the petitions and motions to dismiss were filed.

**A. The Deletion Petitions**

The two deletion petitions allege generally that the potable water provided by Aloha continues to experience problems with black water and rotten egg odor and that Aloha has failed to take adequate steps to address these problems in a timely manner.

The two deletion petitions ask for three items of relief:

- (1) Timing of and Conditions for Implementation of Treatment Improvements. (First Petition) The Commission should approve the action plan that the rate case order originally required Aloha to submit by July 30, 2002 and to implement by December 31, 2003:
  - only after an independent audit of Aloha's processing plant and methodology,
  - only if the action plan contains the minimum requirements imposed by neighboring utilities for raw water processing, and
  - only if a Citizens' Advisory Committee is created to monitor the effectiveness of the plan.
  - Further, the first petition asks that the implementation date for the improvements be accelerated from December 31, 2003 to April 30, 2003.<sup>7</sup>

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<sup>7</sup> The original December 31, 2003 implementation date has become February 12, 2005 as a result of the stay granted by the Commission pending the appeal of the rate case order.

- (2) Deletion of Territory. (Both Petitions) If significant resolution of the problems does not occur in a timely manner – originally identified in the first petition as June 30, 2003 – the Commission should amend Aloha’s certificate to delete the entire Seven Springs territory (first petition) and the Riverside Villas area (second petition).
- (3) Transfer of Territory to Pasco County Water System. (First Petition) Upon deletion from Aloha’s service territory, the Commission should make the Seven Springs area part of the service area of the Pasco County water utility system.

#### B. Standard of Review

The purpose of a motion to dismiss is to raise a question of law regarding the sufficiency of the facts alleged in a petition to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. Id. When making this determination, only the petition can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioners. Id. Moreover, a petition must be dismissed for lack of jurisdiction if the tribunal does not have jurisdiction over the subject matter of the petition. Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 299 (Fla. 2002).

#### C. Recommended Ruling on Motions to Dismiss

Because the deletion petitions were submitted by customers of the utility in the form of citizen petitions, staff recommends that the Commission should interpret those petitions liberally in ruling on the motions to dismiss. Both petitions fundamentally allege that Aloha is not providing its customers with water of the quality which they are entitled from a monopoly provider of service and request that the Commission take specific actions to remedy that situation. Each of these requests will be discussed in turn.

##### 1. Timing of and Conditions for Implementation of Treatment Improvements

Aloha’s Position. Aloha argues that the portion of the first petition asking for the imposition of conditions on approval of an action plan and for a change in the date for implementation of an improved treatment process amounts to an untimely motion for reconsideration of the rate case order.

OPC’s Response. OPC responds that the customers’ requests for relief are distinct from any issue resolved in the rate case docket. OPC points out that the rate case order is a valid pronouncement requiring the establishment of a Citizens Advisory Committee and that the petition simply seeks an acceleration of the requirement for Aloha to implement an improved treatment process.

Dr. Kurien’s Response. Dr. Kurien’s response does not specifically address the motion to dismiss this portion of the petition.

Analysis and Recommendation. Staff recommends that the Commission reject Aloha's contention that the petitions should be dismissed as amounting to an untimely request for reconsideration of the rate case order. Chapter 367 clearly gives the Commission subject matter jurisdiction over Aloha's quality of service. This includes the authority under Section 367.121(1)(a) to prescribe standards of quality and measurements, and under Section 367.121(1)(d) to require facility improvements necessary to provide the prescribed quality of service:

367.121 Powers of commission.—

(1) In the exercise of its jurisdiction, the commission shall have power:

(a) To prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements ... to be observed by each utility, except to the extent such authority is expressly given to another state agency. ...

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(d) To require repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service... .

Moreover, by affirming the rate case order that directed creation of a Citizens' Advisory Committee, the court upheld the Commission's jurisdiction to give such a body a role in evaluating and monitoring water treatment and water quality.

Aloha's argument that the first petition amounts to an untimely motion for reconsideration of the rate case order raises matters outside the four corners of the petition, and therefore is not a proper basis for dismissal. For that reason, staff recommends that the Commission deny the Motion to Dismiss the portion of the first deletion petition that requests establishment of a timetable and conditions for implementation of improvements to the water treatment process.

Staff believes that a Commission decision not to dismiss based on this ground should not preclude Aloha from raising this argument as an issue in the deletion docket. Staff notes, however, that the posture of the case has changed significantly since the first deletion petition was filed:

- The rate case order was affirmed on appeal and the Court's mandate issued on June 30, 2003. The Court's ruling upheld the requirement for Aloha to implement treatment improvements, but the timing of that ruling made it impossible for the Commission to accelerate the implementation date to April 30, 2003, as requested by the petition.

- The deadline for implementation of improvements has been delayed from December 31, 2003 to February 12, 2005, as the result of the stay that was granted pending appeal.
- The independent audit requested by the petition has been conducted by Dr. Audrey Levine in conjunction with OPC without the necessity for a Commission order.
- A Citizens Advisory Committee has been formed pursuant to the rate case order.
- Aloha is seeking relief from the 98% hydrogen sulfide removal standard required by the rate case order, and the parties appear to agree that it would be too costly to attempt to achieve this standard.

In light of these developments, the petition's request for an independent audit is now moot and the request for an April 30, 2003 implementation date is impossible to grant. Moreover, Aloha's argument that the request for modifications to the water treatment requirements and timetable should be treated as an untimely motion for reconsideration of the rate case order is less persuasive, since Aloha itself is now seeking a change in those requirements.

If the motion to dismiss is denied, Staff's recommendation on what action the Commission should take at this time regarding modification of the treatment requirements and timetables in the rate case order is discussed in Issue 4, below.

## 2. Deletion of Territory

Aloha's Position. Aloha argues that the Commission does not have the jurisdiction to sequester the Seven Springs area from Aloha and make it a part of the County's water service area. The Legislature has never conferred upon the Commission a general authority to regulate public utilities. The Commission has "only those powers granted by statute expressly or by necessary implication." Deltona Corp. v. Mayo, 342 So. 2d 510 (Fla. 1977). Any reasonable doubt as to the lawful existence of a particular power must be resolved against the exercise thereof. Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493 (Fla. 1973).

Aloha argues that it is statutorily required to provide service to the area described in its certificate of authorization within a reasonable time. Section 367.111(1), Florida Statutes, provides that:

[i]f the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area to that of another utility company is economical and feasible, it may amend the certificate of authorization to delete the area not served or not properly served by the utility, or it may rescind the certificate of authorization.

According to Aloha, this is a far cry from deleting territory of a utility consistently found to be in compliance with all environmental standards promulgated by the Florida Department of

June 17, 2004

Environmental Protection (DEP), on the basis of a failure to implement a water treatment standard imposed by the PSC, and transferring such territory to the County, a nonjurisdictional service provider. Aloha argues that the Commission lacks such jurisdiction.

Finally, Aloha argues that the customers do not have standing to seek to delete a portion of Aloha's service area to be made part of the County's service area. The Florida Supreme Court has held that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968).

OPC's Response. OPC argues that Aloha's reliance on Storey v. Mayo to oppose the customers' deletion request is misplaced. In Storey, a group of customers challenged the Commission's approval of a territorial agreement between Florida Power Corp. and the City of Homestead. The Court found that the Commission had the authority to approve the agreement, and that by so doing, the Commission, in effect, informed the electric company that it would not have to serve the particular area because under the circumstances, it would not be reasonable to require it to do so. 217 So. 2d at 307-308. On the other hand, in the instant case, the customers are asking the Commission to exercise its authority over a service territory in a particular fashion. Contrary to Aloha's misinterpretation, the Storey ruling actually supports the Commission's authority to grant the Petition, should the Commission deem it proper.

Dr. Kurien's Response. Dr. Kurien points out that the petitioners have not rushed to seek deletion of Aloha's territory. Rather, they have recognized Aloha's responsibility in this matter and have demonstrated "the patience of Job" in their search for solutions. The customers have recognized in the petition the need to give Aloha time to remedy the problems through an independent scientific audit of the adequacy of its processing methods and physical plant. However, Aloha's continued denial of its responsibility to deal with the "black water" and associated problems leaves the customers with no choice but to seek solutions.

Dr. Kurien argues that Chapter 367, Florida Statutes, gives the Commission exclusive jurisdiction over each utility with respect to its authority, service and rates. That includes granting a certificate and setting a utility's service territory. If the Commission were not empowered to also amend or rescind such grants of authority, the Commission would become merely the agent of a government serving the interests of the monopoly instead of its citizens, by delivering them to the monopoly as captive customers. Aloha itself points out in its Motion to Dismiss that Section 367.111(1), Florida Statutes, authorizes the Commission to "amend the certificate of authorization to delete an area not served or not properly served by the utility or it may rescind the certificate of authorization." In the rate case order, the Commission already concluded that the Seven Springs area has not been properly served by Aloha.

Analysis and Recommendation. Staff recommends that the Commission reject Aloha's contention that the petitions should be dismissed on the grounds that the Commission lacks jurisdiction to order a deletion of territory and that the petitioners lack standing to seek such a deletion.

The Commission has subject matter jurisdiction to grant, deny, amend, revoke, suspend or rescind certificates of authorization. See Sections 367.045(5), 367.045(6), 367.111(1) and

367.161(2), Fla. Stat. Staff recognizes that there may be limitations on the Commission's exercise of the power to delete service territory depending on the circumstances of a particular case. Those potential limitations, however, do not detract from the Commission's subject matter jurisdiction to consider a complaint seeking such relief. This is particularly true since the Commission is charged under Section 367.011(3) to construe its powers under Chapter 367 liberally in order to protect the public health, safety and welfare.

This is nevertheless a case of first impression regarding whether the Commission can or should delete territory based on concerns about finished water quality when that water appears to meet all of DEP's standards for drinking water quality.<sup>8</sup> Thus, staff believes that a Commission decision not to dismiss based on this ground should not preclude Aloha from raising an issue in the case regarding the extent of the Commission's territory deletion authority.

Staff also recommends that the Commission reject Aloha's contention that the petitioners lack standing under Storey v. Mayo. That case held that an individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. The petitioners have not alleged that they are requesting to be deleted from Aloha's service territory merely because they deem it advantageous to themselves. Rather, they allege that the service provided by Aloha is inadequate and provides a statutory basis for deletion.

For these reasons, the Commission should deny Aloha's motion to dismiss based on the Commission's asserted lack of jurisdiction to order territorial deletion and petitioners' asserted lack of standing to request such relief. If the motion to dismiss is denied, staff's recommendation on what action the Commission should take at this time regarding the deletion request is discussed in Issue 6, below.

### 3. Transfer of Territory to Pasco County Water System

Parties' Arguments. Most of the parties' arguments regarding the Commission's jurisdiction over territorial deletion and the petitioners' standing to seek such relief are also applicable to the request to transfer the Seven Springs service area to the Pasco County water system.

Analysis and Recommendation. Staff recommends that the Commission dismiss the portion of the first petition that asks the Commission to transfer the Seven Springs service area to the Pasco County water utility system. The Commission does not have subject matter jurisdiction over the Pasco County water utility system. That system is exempt from Commission regulation as a governmental authority pursuant to Section 367.022(2), Florida Statutes. Therefore, the Commission does not have the authority to make any portion of Aloha's service territory a part of the County's water system.

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<sup>8</sup> **Attachment C** contains a summary of previous cases involving the exercise, or requested exercise, of the Commission's deletion authority. None of these cases involve the type of factual situation at issue in this docket.

June 17, 2004

D. Summary

The motions to dismiss should be granted in part and denied in part. The Commission should dismiss for lack of jurisdiction the portion of the first petition that requests that the Seven Springs service territory be made a part of the service area of the Pasco County water utility system. The remainder of the motions to dismiss both petitions, which address the timing and conditions for implementation of treatment improvements and the deletion of territory, should be denied.

**ISSUE 4:** Should the Commission grant Aloha's motion to modify the rate case order, to change the 98% standard for removal of hydrogen sulfide contained therein to agree with the Tampa Bay Water Standard of 0.1 mg/L?

**RECOMMENDATION:** Aloha's motion to modify the rate case order should be granted in part and denied in part. The fourth ordering paragraph of the rate case order should be modified to read that "Aloha shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water at the point of delivery with the customers' piping. Compliance with such requirement shall be determined based upon samples taken monthly at a minimum of two sites at domestic meters most distant from the multiple treatment facilities. Such sites shall be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted. Aloha shall implement this standard no later than February 12, 2005." The Commission should direct Aloha to use the treatment process that Aloha concludes will achieve this level of treatment in the most cost-effective manner. Finally, the Commission should require monthly progress reports, as set forth in the staff analysis. (Walden, Daniel, Gervasi)

**STAFF ANALYSIS:**

**Modification of Rate Case Order**

In the fourth ordering paragraph of Order No. PSC-02-0593-FOF-WU (the rate case order), the Commission ordered Aloha to, by no later than December 31, 2003, "make improvements to wells 8 and 9, and then to all of its wells, to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the finished water." In the fifth ordering paragraph of the order, the Commission required Aloha to submit a plan within 90 days showing how it intends to comply with that requirement.

In its motion to modify the rate case order, Aloha states that it submitted the requisite report on October 18, 2002, and noted therein that achieving the 98% removal standard was at best very expensive, and at worst, impossible. Attached to the motion as Exhibit A is a letter dated July 23, 2003, from OPC to the Commission, stating that the Citizens agree that the 98% removal standard should be replaced with other standards. The letter notes that the Tampa Bay Water Authority (TBW) uses a maximum total level of 0.1 mg/L standard, and that additional standards may also be appropriate, depending on the final audit report findings.

Aloha states that it continues to work with Dr. Levine, who was originally hired by the Citizens to review possible additional treatment alternatives, and intends to move forward with the recommendation of Dr. Levine to implement one of the appropriate treatment options. The utility believes that the Commission should modify the rate case order to eliminate the 98% removal requirement as unreasonable and/or inappropriate, and that the standard provided by TBW should be adopted in its place, including the testing requirements to maintain such compliance. Finally, Aloha states that all such modified requirements should be effective by the revised deadline imposed by Order No. PSC-03-1157-PCO-WU, such that the language of the fourth ordering paragraph of the rate case order be revised to read as follows:

June 17, 2004

Ordered that Aloha Utilities, Inc. shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility. Compliance with such requirement shall be determined based upon samples taken at least annually from a point of connection just after all treatment systems and before entry of such water into the transmission and distribution system of the utility. Aloha should implement this standard no later than February 12, 2005.

On June 16, 2004, OPC filed a letter written by Dr. Kurien dated June 13, 2004 on behalf of the CAC, which OPC adopts by reference as its response to Aloha's motion. The letter states that any modification to the rate case order should be qualified to include the following language:

1. The reference to sulfide in "finished water" should be stated as a maximum contaminant level for total sulfides of 0.1 mg per liter of delivered water at the point of its entry into the domestic system at the domestic meter;
2. The improvements should be such that sulfide present in raw water or generated during treatment and transmission will be removed, not converted, to a level not to exceed 0.1 mg/L in finished water delivered at the point of entry into the domestic system; and
3. Compliance with such requirements shall be determined based upon samples taken at least once a month at a minimum of two sites at domestic meters most distant from each of the multiple treatment facilities. Such sites shall be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted.

It appears to staff that the 98% removal standard required by the rate case order is not attainable for all of Aloha's wells, due to low concentration of hydrogen sulfide in some of the wells. For example, concentrations ranged between 0.61 mg/L to 2.43 mg/L in November, 2003. Removing 98% of 0.61 mg/L (.5978 mg/L) is thus not feasible. TBW is a wholesale water supplier in the area and has voluntarily imposed a standard for hydrogen sulfide not to exceed 0.1 mg/L for its finished water. Staff recommends that this standard be applied by Aloha because it appears to be reasonable and attainable, and will diminish the occurrences of black water.

Staff notes that TBW has already begun using this standard, and Aloha will be blending its water with TBW water when water is purchased through Pasco County. Regarding water blending, it is significant to note that beginning in January, 2005, TBW will be using chloramines for disinfection. Pasco County will also convert to the use of chloramines at that same time. In order for Aloha's water to be compatible then with purchased water, Aloha will have to convert from chlorination to the use of chloramines. Staff has been informed by both the utility's engineering consultant and Dr. Levine that treatment for hydrogen sulfide is necessary in conjunction with converting to chloramines so that the black water problem is not exacerbated. This modification will have the added benefit of allowing Aloha to produce water that is

June 17, 2004

compatible with purchased water, which will further enhance the water quality provided to Aloha's customers.

It appears to staff that qualifiers nos. 1 and 3, as outlined by Dr. Kurien in response to Aloha's motion to modify the rate case order, are reasonable and should be included in the modification. However, qualifier no. 2, the requirement that the improvements must result in removal, as opposed to conversion, of sulfides not to exceed the 0.1 mg/L standard, would have the effect of eliminating any treatment process which oxidizes, rather than removes, hydrogen sulfide. As discussed further below, staff does not recommend that the Commission prescribe the treatment methodology that Aloha should use in order to comply with the requisite treatment standard. This is a business decision that should be made by Aloha's engineering experts. Therefore, staff does not recommend the inclusion of that qualifier in modifying the rate case order.

For the foregoing reasons, staff recommends that Aloha's motion to modify the rate case order be granted in part and denied in part. The fourth ordering paragraph of the rate case order should be modified to read that:

Aloha shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water at the point of delivery with the customers' piping. Compliance with such requirement shall be determined based upon samples taken monthly at a minimum of two sites at domestic meters most distant from the multiple treatment facilities. Such sites shall be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted. Aloha shall implement this standard no later than February 12, 2005.

In so recommending, staff recognizes that the Florida Supreme Court has found that:

orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.<sup>9</sup>

Nevertheless, the Court continued by stating that:

We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. For one thing, although courts seldom, if ever, initiate proceedings on

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<sup>9</sup> Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 339 (Fla. 1966).

their own motion, regulatory agencies such as the commission often do so. Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.<sup>10</sup>

With the passage of time, the parties and staff have come to realize that the 98% standard is unattainable on a system-wide basis. Therefore, staff believes that the public interest warrants modification of the standard to a more realistic standard which has been adopted by TBW, and that this action fits squarely within the reasoning of the Peoples Gas Court.

### Other Options

1. Direct Aloha to implement a specific treatment. Rather than specifying a standard for the amount of hydrogen sulfide allowed in the finished water, the Commission could order the utility to implement a new, specific treatment process to reduce the hydrogen sulfide concentrations in the finished water. This could be any one of the treatment methods included in Dr. Levine's report, including aeration, oxidants, and membrane technology. According to Aloha, H<sub>2</sub>O<sub>2</sub> oxidation is the least cost alternative recommended by Dr. Levine in her study. Aeration, which is the method used by Pasco County coupled with storage, is not a feasible alternative for Aloha due to the compact size of the well sites.

Aloha's consultant has stated that H<sub>2</sub>O<sub>2</sub> could be implemented simultaneously with the chloramine process by January, 2005. However, representatives of the CAC have expressed reservations over using H<sub>2</sub>O<sub>2</sub> due to the lack of statistical performance data for hydrogen sulfide removal in drinking water. While H<sub>2</sub>O<sub>2</sub> has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. Scientific review suggests that it will be effective for that purpose, but results have not been proven in a full scale utility application. As discussed in the Case Background, Attachment B is the response by Aloha to staff's data request concerning the costs for implementation of treatment options contained in Dr. Levine's report.

Commission practice has been not to micro-manage the business decisions of regulated companies, but to instead focus on the end-product goal. In keeping with this established practice, staff does not recommend that the Commission prescribe the specific treatment process to be used in this case. Prudency reviews in general rate cases provide more than ample protections for the public interest. The Commission's involvement in the determination of which treatment alternative that Aloha implements should take the form of a prudency review during the rate proceeding wherein Aloha requests, and carries the burden to prove, that the costs of the treatment process should be included in rates. This is the tool the Commission now uses to

June 17, 2004

protect the public interest while avoiding the direct management by the Commission of utility operations.<sup>11</sup>

2. Purchase all water from Pasco County for Seven Springs. Staff considered an alternative that would involve the purchase of all of Aloha's water from Pasco County. Aloha is currently in negotiations with the County for a new bulk water agreement, which will potentially result in the utility coming into compliance with its WUP. However, in conversations with staff, County officials have indicated that the County cannot provide sufficient bulk water supply to the entire Seven Springs area on a going-forward basis without investing in substantial infrastructure to assure that its supply is not compromised for its own customers. The County has offered to provide up to 45,000,000 gallons per month (1.5 MGD), but Aloha's 2003 annual report shows 103,016,000 gallons was provided to the Seven Springs customers in June, 2003. Thus, the demand exceeds the supply. For this reason, purchasing all of its water from the County does not appear to be a viable alternative.

### Monthly Reports to Staff

Aloha is now in the process of planning its strategy for the installation of treatment equipment to include design, permit application to the DEP, pilot testing of the process, and installation of the equipment at each of the treatment plant sites, such that the treatment process will be operational by no later than January, 2005. Timelines have not yet been established for any of the steps. In light of this, staff recommends that Aloha provide the staff with monthly updates of the progress made each month and the events planned for each upcoming month. If tests were conducted during the past month, Aloha should provide a summary of the test results. Updates should be provided to staff by the tenth of each month beginning July 10, 2004 through August, 2005.

### Summary

Considering the alternatives and approaches noted above, staff believes that the utility and its consultants should decide the treatment method to be chosen to attain the goal of hydrogen sulfide reduction to 0.1 mg/L. Aloha is already meeting standards set forth by the DEP, and has achieved a reduced level of monitoring for lead and copper due to past compliance with the lead and copper rule. Additionally, Commission practice is not to specify a method of treatment for a regulated utility, but rather to set a goal or standard to be reached. Staff notes that any change requested in the water treatment process must be approved by the DEP, so Aloha will rely upon the expertise of that agency's district office in Tampa in addition to the opinion of its consulting engineer. Moreover, staff believes that two of the three qualifiers suggested by Dr. Kurien are reasonable and should be included in the modification of the rate case order.

Based upon the foregoing, staff recommends that the Commission grant in part and deny in part Aloha's motion to modify the rate case order. The fourth ordering paragraph of the rate case order should be modified to read that "Aloha shall make improvements to its wells 8 and 9

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<sup>11</sup> See, e.g., Order No. PSC-94-0296-PHO-EI, issued March 15, 1994, in Docket No. 930676-EI, In Re: Petition of Florida Power Corporation to open investigation into Tampa Electric Company's proposed construction of 69 kV transmission line to serve the Cities of Wauchula and Fort Meade.

June 17, 2004

and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water at the point of delivery with the customers' piping. Compliance with such requirement shall be determined based upon samples taken monthly at a minimum of two sites at domestic meters most distant from the multiple treatment facilities. Such sites shall be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted. Aloha shall implement this standard no later than February 12, 2005." The Commission should direct Aloha to use the treatment process that Aloha concludes will achieve this level of treatment in the most cost-effective manner. Finally, the Commission should require monthly progress reports, as set forth above.

**Issue 5:** What additional steps should Aloha take to address the black water problem occurring in customers' homes?

**Recommendation:** To assist customers who have experienced damage due to the water's high hydrogen sulfide content, staff recommends that Aloha should be strongly encouraged to implement a low interest loan or a rebate program to assist customers in the Seven Springs service territory who wish to replace their existing copper pipes. The details of two such program proposals are discussed in the staff analysis for the utility's consideration. (Kummer, Gervasi)

**Staff Analysis:** There have been multiple complaints by Aloha customers of copper pipe corrosion on the customers' side of the meter for many years. As discussed above, black water is caused by the reaction of copper pipes to the hydrogen sulfide in the water. This corrosion eventually will result not only in discolored water but in physical damage to the integrity of the pipes. There is little scientific evidence to support the belief that less corrosive water in the future will reverse the damage, although it may slow the deterioration. Therefore, customers with damaged pipes will likely continue to experience discolored water and damage even if the number or severity of incidents is reduced. One method to minimize both the discolored water and the damage is to replace the existing copper pipes with CPVC. This, however, can be a costly undertaking. Staff also notes that so long as there is metal in the hot water heater or in plumbing fixtures, there could still be incidences of black water even after repiping with CPVC.<sup>12</sup>

In a prior order relative to the black water problem in Aloha's service area, the Commission found that because the utility's responsibility ends at the meter, the Commission could not require the utility to offer low cost loans or rebates for the purpose of repiping customers' homes.<sup>13</sup> In making that finding, the Commission cited to Rules 25-30.225(5) and 25-30.210(7), Florida Administrative Code. Rule 25-30.225(5) requires each water utility to operate and maintain all of its facilities and equipment in safe, efficient, and proper condition, up to and including the point of delivery into the piping owned by the customer. Rule 25-30.210(7) defines "point of delivery" to mean "the outlet connection of the meter for metered service or the point at which the utility's piping connects with the customer's piping for non-metered service." Staff believes that Rule 25-30.225(5) recognizes that neither the utility nor the Commission has authority over, or responsibility for, what sort of plumbing a customer or builder may choose to use. Further, a customer's interior plumbing is not covered under Section 367.011, Florida Statutes, and therefore it is not within the Commission's purview to order a utility to finance such investment.

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<sup>12</sup> Pasco County uses tray aeration coupled with storage to minimize incidences of black water in customers' homes. Even so, the County still has a few black water complaints. The County generally counsels its customers to turn off their hot water heaters if they are away for an extended period, to flush them upon their return, and that this may be necessary even if their pipes are plastic.

<sup>13</sup> Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County, at page 24.

Before reaching the conclusion that the Commission lacked the statutory authority to require the utility to implement a low interest loan or rebate program through a cost recovery clause to assist customers in financing the replacement of copper pipes, staff considered the mechanics of how such a program would be administered, similar to the cost recovery clauses used in the electric and gas industries. Attachment F contains that information. Nevertheless, we do not believe that the Commission should authorize such recovery for expenses incurred beyond the meter absent clear statutory authority. Moreover, there is no instrument by which to analyze the cost-effectiveness of a rebate program clause, such as the Rate Impact Measure (RIM) used in the electric industry to measure the cost-effectiveness of conservation programs. The cost-effectiveness of the program would largely depend on the number of customers who participate in it, and there is no accurate way to measure the probability of participation. Total costs from the rebate could result in a doubling of the current revenue requirement if 3,000 Seven Springs customers choose to participate. If the recovery factor were assessed on a per customer basis, depending on the participation rate, staff estimates that the monthly charge could range from \$2.00 at a participation level of 500 customers, to \$12.00 if participation rose to 3000 customers. Assuming that at least the households requesting deletion would take immediate advantage of the rebate, the per customer cost of the rebate would be approximately \$6.00 per month. The maximum revenue impact of implementing such a rebate program is not known. It is important to note that the recovery clause assessment would be in addition to any increase in revenue requirements necessary to meet the additional treatment addressed in Issue 4 and the cost to purchase water from Pasco County.

To financially assist customers who have experienced damage due to the water's high hydrogen sulfide content, staff recommends that Aloha should be strongly encouraged to implement a program in the Seven Springs service territory for customers who wish to replace their existing copper pipes with CPVC. The following is a discussion of two potential proposals for implementation of such a program, which staff offers for Aloha's consideration.

### Proposals

1. Low Interest Loan Program. Aloha would secure a low interest loan for the purpose of lending to its customers, at cost, a sum of money to assist customers in financing the replacement of copper piping in their homes with PCVC. Aloha would allow the customers to pay the loan back over a period of five years. The monthly amount would appear as a line-item surcharge on the customer's water bill. Any customer who currently experiences black water problems would be eligible for the loan program for the replacement of all interior copper water pipes with CPVC, equal to 50% of the total cost of the replacement, up to a maximum total loan of \$2,500. This option would be available to any customer in Aloha's Seven Springs service territory on a prospective basis, and would not be dependent on the treatment option selected by the utility. Only customers with copper pipes would be eligible for the loan. The customer would have to show evidence of black water or damage due to corrosion, and would have to apply for the loan within six months of the program's initial availability. If the utility were to find the program to be successful, it could extend the loan qualification time period.

To take advantage of the loan program, customers would have to submit an invoice from a licensed plumber detailing the work performed, including a signed statement from the plumber

that the damage being repaired was due to corrosion by hydrogen sulfide in the water. Within ten days of the receipt of the invoice and statement by Aloha, Aloha would submit payment of one-half of the invoice amount, up to \$2,500, directly to the plumber performing the work. No less than one full billing cycle prior to the effective date of the loan program, Aloha would notify all customers in writing of the availability of the program.

2. Rebate Program. Aloha would finance a rebate program whereby any customer who currently experiences black water problems would be eligible for a rebate from the utility for the replacement of all interior copper water pipes with CPVC, equal to 50% of the total cost of the replacement, up to a maximum total rebate of \$2,500. This option would be available to any customer in Aloha's Seven Springs service territory on a prospective basis, and would not be dependent on the treatment option selected by the utility. Only customers with copper pipes would be eligible for the rebate. The customer would have to show evidence of black water or damage due to corrosion, and would have to apply for the rebate within six months of the program's initial availability. Only customers with copper pipes would be eligible for the rebate. If the utility were to find the program to be successful, it could extend the rebate qualification time period.

To take advantage of the rebate program, customers would have to submit an invoice from a licensed plumber detailing the work performed, including a signed statement from the plumber that the damage being repaired was due to corrosion by hydrogen sulfide in the water. Within ten days of the receipt of the invoice and statement by Aloha, Aloha would submit payment of one-half of the invoice amount, up to \$2,500, directly to the plumber performing the work. No less than one full billing cycle prior to the effective date of the rebate program, Aloha would notify all customers in writing of the availability of the program.

### Impact on Customers

The obvious benefits of a low interest loan or rebate program would accrue to customers who have lived with the black water problem for a number of years and for whom pipe replacement is the best or only option. Many customers have complained about the need to run large quantities of water in order to get usable water. Cleaner water would result in less waste, and help conserve a precious natural resource. As indicated above, Aloha is currently exceeding its permitted water withdrawal and has been instructed to implement conservation programs by the Southwest Florida Water Management District. It is, however, unlikely that all customers would take advantage of the program. Some customers in older sections of the service territory, like Veterans Village, apparently have no problem with black water. Most new homes are being built with CPVC pipe and therefore should not have many incidences of black water.

### Summary

Pursuant to the findings of Order No. PSC-00-1285-FOF-WS, the Commission does not have the statutory authority to require the utility to offer low cost loans or rebates for the purpose of repiping customers' homes because the utility's responsibility ends at the meter. Nevertheless, staff believes that such a loan or rebate program would be a big step in the direction of regaining customer confidence. As evidenced by the deletion petitions, Aloha's

Dockets Nos. 020896-WS and 010503-WU

June 17, 2004

customer relations are in a state of serious disrepair. Offering to help with replacement of damaged pipes could be seen as a positive step by the utility to mend relations with its customers and prevent such disputes in the future. Staff therefore recommends that the Commission strongly encourage the utility to adopt a low interest loan or rebate program, such as the ones outlined above.

**Issue 6:** What further action should the Commission take at this time on the deletion petitions?

**Recommendation:** The Commission should decline to take further action on the customers' requests to delete the Seven Springs area until after Aloha has had an opportunity to implement the new treatment process required by Issue 4. Staff will bring a recommendation for further action on the deletion petitions as soon as practicable after the February 12, 2005 implementation deadline. (Gervasi, Walden, Daniel)

**Staff Analysis:** As stated in the case background, the first deletion petition requests approval of the action plan only: 1) after an independent audit of Aloha's processing plant and methodology; 2) if it contains the minimum requirements imposed by neighboring utilities for raw water processing; and 3) if a Citizens' Advisory Committee is created to monitor the effectiveness of the plan. The petition requests that the implementation date for treatment improvements be accelerated to April 30, 2003, and that the Commission delete the Seven Springs area from Aloha's certificate if significant resolution of the problems does not occur by that date. The petition thus recognizes that Aloha ought to be given an opportunity to resolve the black water problem prior to the Commission taking any action to delete territory. However, because the April 30, 2003 date has passed, these customers now express a desire for deletion of territory, as strongly evidenced by the testimony taken at the April 8, 2004 service hearings and in numerous letters received subsequent to the service hearings.

Aloha timely filed its action plan on October 18, 2002, in accordance with Order No. PSC-02-1056-PCO-WU, the partial stay of the rate case order. An independent audit was financed by OPC and performed by Dr. Levine. Dr. Levine's report was completed in two phases, the second of which was issued in February 2004 and contains the various black water treatment options as discussed in Issue 4. By Order No. PSC-04-0254-PCO-WS, the Commission removed the deletion docket from abeyance in order for parties and staff to fully consider the audit report. The Commission found that "because the results of the audit report may directly impact the Petitions, we shall defer ruling on the two customer Petitions . . . until after all parties and staff have fully analyzed the audit report and a customer service hearing is conducted on its findings and recommendations." *Id.* at 4. As discussed in Issue 4, Aloha has requested that it be held to the same standard for raw water processing as the Tampa Bay Water Authority. A Citizens' Advisory Committee has been created and has been actively engaged in exploring solutions to the black water problem.

The remaining request contained in the petition, that the implementation date for treatment improvements be accelerated to April 30, 2003, is obviously not possible now, nor was it possible from the date the petition was filed. On April 30, 2003, the rate case order was still pending on appeal. The First District Court of Appeal's mandate did not issue until June 30, 2003, and the new date to implement the 98%-reduction solution thus became, and still remains, February 12, 2005. Therefore, Aloha is not out of compliance with Commission directives relative to the implementation deadline. However, if Aloha fails to implement the treatment methodology as required in Issue 4 by February 12, 2005, it will be out of compliance with the rate case order and the stay order. And pursuant to Section 367.161(2), Florida Statutes, the

Commission may amend, suspend, or revoke a utility's certificate of authorization when it is found to have refused to comply with, or to have willfully violated, a lawful Commission order.

Staff notes that the Commission has found that revocation proceedings are reserved for cases of severe violations of Commission orders or rules, and that revocation is only sought after all other efforts to bring the utility into compliance have failed. See Attachment C. Staff recommends that Aloha should continue to be held to the February 12, 2005 deadline for implementation of the requisite treatment improvements, as requested by Aloha in its motion to modify the rate case order (Issue 4). To hold Aloha to the accelerated deadline of April 30, 2003, as requested by the petition, would prejudice Aloha because Aloha has been mandated by prior Commission order to implement the treatment improvements by February 12, 2005, and because Aloha waited to initiate the implementation of a treatment option until after the independent audit report was issued, at the request of the customers. Phase II of the audit report concerning treatment options was not issued until February 2004. Finally, it would be premature to set this matter for hearing prior to the expiration of the February 12, 2005 implementation deadline because if Aloha implements a solution to the black water problem, there will be no need for a deletion proceeding to take place. This should be viewed as Aloha's window of opportunity to resolve the black water problem prior to any Commission action to delete territory. Staff will bring a recommendation for further action on the deletion petitions as soon as practicable after the February 12, 2005 implementation deadline.

Staff considered the idea of recommending that the Commission set the deletion petitions directly for hearing. However, aside from the prejudicial nature of moving up the deadline for Aloha to implement a solution to the black water problem, much of the information that would need to be obtained in order to determine whether deletion would be in the public interest is as yet unknown and may not be ascertainable by the date of the hearing if it were to be scheduled immediately. Nor do we know exactly how long it will take to gather such information. For example, it will be necessary for the County to perform a hydraulic analysis in order to estimate the costs involved in the provision of service to the Seven Springs territory by the County. The County has advised that it will take two months at the very least, and probably longer, to perform the hydraulic analysis.

Staff will continue to work with the County to gather the necessary information regarding the feasibility of obtaining service to the Seven Springs territory from the County. In response to a staff letter, the County has advised that if the Aloha system were for sale, the County is ready, willing and able to pursue a purchase. See Attachment D. As a point of information, staff has also attached, as Attachment E, a comparison of rates currently charged by the County to those currently charged by Aloha. It is important to note that these rate comparisons do not contain the increased bulk water costs that the County may charge to Aloha as a result of a bulk water agreement, the hydrogen sulfide treatment costs that Aloha will incur, or the connection charges that the County would charge to Aloha customers who would receive direct service from the County as a result of a Commission action to delete territory. Those costs are, as yet, undetermined. Moreover, staff notes that a total of approximately 11,000 households would be affected by the deletion of the Seven Springs territory from Aloha's certificate. To date, approximately 2,000 of the 11,000 customers in the Seven Springs service territory have expressed a desire for territory deletion. The interests of the other 9,000 customers, who

Dockets Nos. 020896-WS and 010503-WU  
June 17, 2004

represent the vast majority of the Seven Springs customers, are as yet unknown. These issues merit exploration and will be addressed, as appropriate, in the next staff recommendation concerning what further action should be taken on the deletion petitions.

For the foregoing reasons, the Commission should decline to take further action on the customers' requests to delete the Seven Springs area until after Aloha has had an opportunity to implement the new treatment process required by Issue 4. Staff will bring a recommendation for further action on the deletion petitions as soon as practicable after the February 12, 2005 implementation deadline.

Dockets Nos. 020896-WS and 010503-WU  
June 17, 2004

**Issue 7:** Should the dockets be closed?

**Recommendation:** No. Docket No. 010503-WU should remain open to further address the interim rate refund issue. Docket No. 020896-WS should remain open to monitor compliance with the applicable treatment and reporting requirements and to take further action on the request to delete the Seven Springs area from Aloha's certificated territory. (Gervasi)

**Staff Analysis:** Docket No. 010503-WU should remain open to further address the interim rate refund issue. Docket No. 020896-WS should remain open to monitor compliance with the applicable treatment and reporting requirements and to take further action on the request to delete the Seven Springs area from Aloha's certificated territory.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 8

### C. Issues Stipulated at Hearing

**Issue 6.** The cost rate for variable cost, related party debt shall be the prime rate plus two percent as of December 31, 2001.

**Issue 12.** Salary expense shall be reduced by \$21,268 to correctly allocate the annualized salary of the utility operations supervisor.

### III. QUALITY OF SERVICE

Section 367.081(2)(a)1., Florida Statutes, and Rule 25-30.433(1), Florida Administrative Code, specify that in every rate case, we shall determine the value and quality of service provided by the utility. Rule 25-30.433(1), Florida Administrative Code, requires us to evaluate three separate components of water and wastewater utility operations: (1) quality of the utility's product; (2) operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction. Our analysis of each of the three components identified in Rule 25-30.433(1), Florida Administrative Code, is set out below.

#### A. Quality of Utility's Product

In this facet of the quality of service determination, we consider the quality of the utility's product and whether the water delivered to the customers' meters meets state and federal standards.

At the hearing, we heard testimony from 29 customers who were dissatisfied with the quality of service provided by Aloha. They complained of black or discolored water; odor/taste problems; low pressure; sediment/sludge; and the utility's response to customer complaints or inquiries. Many customers brought containers of discolored or black water to the hearing for viewing. Their testimony is summarized below.

Representative Fasano testified that Aloha delivers to its customers smelly, foul, dirty black water. He also alluded to the newspaper photograph which showed an Aloha fire hydrant spewing discolored water. He made reference to the fact that the black

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 9

water problem had been on-going for years, was occurring in 1996 and before, and that complaints to his office still continue. The amount of complaints received amounts to reams and reams of paper.

Customer witness Oberg testified that the water in his house was dirty, occasionally turned gray, and smelled like rotten eggs. He also testified that the water in his toilet tank was black and some water he drained from his hot water heater was black.

Customer witness Hawcroft testified that the water he receives is foul smelling and discolored and causes stained laundry. His household uses bottled water. He stated that he testified about the very same water quality problems two years ago, and the problems remain the same.

Customer witness Kurien testified that he receives black water.

Customer witness Corelli also testified that the water he receives is not drinkable, is an inferior product and that he receives black water.

Customer witness Chestnutt testified that Aloha had never provided him with decent water.

Customer witness Hartinger testified that the water he receives is filthy, the water in a filter housing was black, and the filter itself was full of black grit. He further described the water as disgusting, vile, and foul smelling.

Customer witness Wood, also an intervenor to this proceeding, spoke about the corrosive nature of Aloha's water. He stated that copper pipe does not react to water in the plumbing system unless there is an acid contaminant in the water. He testified that the hydrogen sulfide is the culprit, and the water Aloha supplies is corrosive and is the cause of the black water. He also stated that the water was revolting.

Customer witness Bradbury testified that the water was black and smelly. He also referred to his soft water unit that failed after three years due to sludge buildup.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 10

Customer witness Bulmer testified that the water quality was poor.

Customer witness Wickett testified that he had received dirty water, and it had a pretty strong smell. He is forced to buy bottled water whenever he has company over to his house.

Customer witness Logan testified that he found a black greasy substance on the inside of his copper pipes. Also, when he filled his garden tub, there was black stuff floating in the water. He stated that he was sickened by the water and that it smelled like sulphur.

Customer witness Nowack testified that the water that came out of her kitchen faucet was black, greasy sludge. She said the quality of the water is the worst she has experienced in her whole life.

Customer witness Depergola testified that he received stinky, lousy, miserable water, and that when he took a shower his body smelled worse than before. He further stated that the water causes stained laundry, is not drinkable, smells, and is dirty. His pipes are filthy inside.

Customer witness Karas testified that the water was lousy, smelly, and nasty. It seems like it has rust, and, most of the time, you see a lot of black.

Customer witness Skipper testified that she did not drink the water nor bathe in it. It has a bad taste and a bad smell. The water turns her ice cubes yellow. She has a refrigerator with door water and ice, which she will not use.

Customer witness Legg testified that the water was black, very dirty, left an oily residue, and was always cloudy. If he does not use the water for a week and then turns it on, it will be brown and oily, but not to the extent of the first time that it happened.

Customer witness Whitener testified that she was unable to drink her water.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 11

Customer witness Rifkin testified that he received black, dirty, stinking water.

Customer witness Lewandowski testified that the water quality was poor.

Aloha, through a late-filed exhibit, submitted a summary of its attempt to contact all of the customers who complained about the quality of the water. Fifteen of these customers allowed an Aloha engineer to come into their home. At each home the engineer took samples of the water coming into the home and inquired of the customers where they had the most trouble inside their homes. These locations were used for the interior samples. Nowhere during any of the visits did Aloha's engineer see anything other than clean, clear water.

The engineers of the utility, OPC, and DEP all appear to agree that the black particulate in the water giving the water a black or grayish color is copper sulfide. They also appear to agree that the copper sulfide is formed by the reaction of hydrogen sulfide with copper pipes. However, the reason why some homes with copper pipes have a copper sulfide problem (black water), and others do not, is not as easily explained. For Aloha, the black water problems were initially concentrated in its Chelsea, Wyndtree, and Wyndgate subdivisions, but appears to be spreading to other subdivisions.

Hydrogen sulfide naturally occurs in much of the source water for Florida's utilities. The black water problem is not unique to the customers of Aloha and does occur in other areas of Florida. It is but one manifestation of a larger problem, that of copper piping corrosion that is prevalent in many parts of Florida. Witness Hoofnagle testified that black water had been found in the Ft. Myers area, and in Polk, Hillsborough, Pasco, Volusia, and Pinellas Counties. According to Mr. Hoofnagle, it appears that most of these events are episodic or have been resolved.

Utility witness Watford testified that the hydrogen sulfide in Aloha's source water is converted to sulfates by chlorination. Sulfates or elemental sulfur will not react with copper under normal conditions, and Mr. Watford claims that there is no sulfide coming through the customer's meter. However, once the water

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 12

enters the customer's home, a multitude of things can cause the formation of sulfide. Utility witness Porter testified that the black water problem occurs in customers' home water piping. Aloha claims that the water delivered to Aloha's customers is pure, clean, color-free, odorless, and meets all State and Federal laws, rules and regulations.

The DEP witnesses agreed that copper sulfide occurs when elemental sulfur or sulfate in the water is converted biochemically in the customer's home from harmless sulfate and elemental sulfur to hydrogen sulfide, which can attack the home copper water piping and create copper sulfide which is the black substance reported by some of Aloha's customers. Factors necessary for the formation of copper sulfide include an energy source, time, temperature, sulfur reducing bacteria, and either sulfates or elemental sulfur. DEP witness Hoofnagle stated that the above conditions are found in both the customer's hot water heater, and the elemental sulfur or sulfates are introduced from Aloha's distribution system.

Aloha's water contains very small quantities of sulfate as it is delivered to the customer, varying from single digit values to the 20 to 25 mg/L level. The national drinking water standards allow 250 mg/L sulfate levels, so Aloha's water contains at most only one tenth of the national limit. DEP believes that the black water is being formed in the customer's pipes after the meter and that this formation of black water after the meter does not constitute a violation of drinking water standards.

Mr. Foster also testified that the finished water produced by Aloha meets all the state and federal maximum contaminant levels for primary and secondary water quality standards including the lead and copper rule. Also, Aloha's compliance with the lead and copper rule has led to a lessening of the monitoring requirements.

OPC witness Biddy disagrees with utility witness Watford's contention that no hydrogen sulfide is coming through the customers' meters. He believes that there is a varying concentration of hydrogen sulfide in the raw water, and that periodically you get much higher concentrations. He believes that when the high concentrations peak, all the chlorine is used up, and not all the hydrogen sulfide is converted to either harmless sulfates or elemental sulfur. Under these circumstances, he

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 13

believes hydrogen sulfide is pumped directly into the system, through the customers' meters, and into the homes.

Witness Hoofnagle testified that there are a number of things the utility might study and implement to reduce or eliminate over time the black water problems now being experienced. There is no panacea or guarantees due to the complex nature of the water and corrosion chemistry and relatively unique specific conditions that are found in the customers' water. However, aeration with pre- and post-pH adjustment added with alkalinity control has proven to be the most effective in other parts of Florida. Additionally there are emerging technologies that lend themselves to addressing the future Disinfection Byproducts Rule 62-550.821, Florida Administrative Code, as well, such as the MIEX system. This is a relatively cost effective solution. Since the black water problems do not appear in all of Aloha's service subareas, it is the DEP's belief at this time that a centralized treatment system would not be cost effective. Future and on-going engineering and cost studies need to identify technical solutions and their associated costs.

In late-filed Exhibit 3, staff witness Foster of the DEP presented a description of the tri-level water treatment process used by Pasco County to remove hydrogen sulfide and reduce the corrosiveness of the water. This process begins with cascade aeration to remove sulfides. After aeration, the water is sent to storage tanks containing a naturally-occurring bacteria. These bacteria convert hydrogen sulfide into elemental sulfur. The water is then chlorinated to remove bacteria and oxidize the remaining sulfide.

When asked what steps Aloha had taken to alleviate the black water problem, witness Foster testified that the utility was permitted on December 12, 1995, to use a polyphosphate corrosion inhibitor. However, some home treatment units can cause the corrosion inhibitor to be less effective. The units tend to remove mineral calcium, iron and magnesium, causing the water to become corrosive, and the pH is lowered.

Although some customers are dissatisfied with the taste, odor, and color of the water, witnesses Hoofnagle and Foster testified that Aloha meets the drinking water standards set forth by the DEP

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 14

for water quality, and that the black water is created beyond the meter. We therefore find that the quality of Aloha's product is satisfactory.

It is apparent from the DEP testimony that Aloha has complied with all DEP rules regarding the quality of the water it produces for its customers. The method it has chosen, however, to meet this responsibility, i.e., the chemical conversion of sulfides to sulfates, has been shown to be reversible in customers' service piping and is one of the factors leading to the formation of black water. Even though Aloha has apparently met its legal obligation regarding water quality, we believe it should be taking a more proactive approach to dealing with the black water problem and responding to its numerous customer complaints about water quality.

Regarding a potential solution to the black water problem, witness Hoofnagle stated that if all the homes had chlorinated polyvinyl chloride (CPVC) piping there would not be a black water issue. When asked if there was anything else that would eliminate the black water problem, witness Hoofnagle stated that some form of water treatment to include aeration could greatly reduce the problem. Staff witness Foster, when asked if there was a mechanism, short of replacing the copper pipe, that would eliminate the black water problem, responded by calling the plastic pipe replacement a quick fix and, outside of that, he did not see an easy way of doing it. Utility witness Watford testified that a customer named Vento had his copper pipe replaced with CPVC and had never seen discolored water again.

Both witnesses from DEP were asked to state what they believed to be the solution to the black water problem and neither cited anything as a final solution except for the replacement of the customers' copper pipe with CPVC. Witness Hoofnagle testified that forms of water treatment would only reduce the problem and stopped short of saying that additional treatment of the water would eliminate the problem. It appears that at least a very large part of the solution to the black water problem in the Aloha service area is the replacement of the customers' copper service pipes with non-copper pipe. However, notwithstanding this, we believe that Aloha's chosen treatment method of converting hydrogen sulfide to sulfate or elemental sulfur through chlorination has not proven to be an adequate remedy. Moreover, Aloha's use of ortho-

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 15

polyphosphates has not proven to be an adequate remedy. Therefore, Aloha shall be required to take additional measures to correct this "black water" problem.

B. Operational Conditions of the Plant

In this facet of the quality of service determination, we consider the operational conditions of the utility's plant facilities, and whether the plant facilities meet DEP standards and are functioning properly.

Utility witness Watford testified that Aloha utilizes chlorination to convert the hydrogen sulfide in the raw water to the sulfate form. Utility witness Porter testified that Aloha also uses an orthopolyphosphate corrosion inhibitor. Aloha's use of a corrosion inhibitor has resulted in a lessening of the monitoring requirements under the lead and copper rule.

Four of the customers who testified complained about low pressure. One of these customers stated that his pressure was low constantly, and was not adequate compared to other places he has lived.

Staff witness Foster testified that the Aloha water system meets all current DEP standards for a drinking water system including the maintenance of the required minimum pressure, quality of the finished water, monitoring, required chlorine residual, certified operators, and auxiliary power. The system is generally in compliance with all applicable DEP rules. Also, Aloha's corrosion inhibitor program was approved by DEP on December 12, 1995. Witness Foster further testified that the chemical analyses of Aloha's finished water indicates no need for further treatment.

Staff witness Hoofnagle testified about fire hydrant flushing. He stated that how often a hydrant should be flushed varies tremendously. He further testified that DEP encourages utilities to flush lines through the hydrants and that it is a standard practice.

The record shows that the utility is meeting standards set forth by the DEP for operating conditions of its plants, as evidenced by the testimony of DEP witness Foster as well as by

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 16

utility witnesses Watford and Porter. **Therefore, we find that the operational condition of the plant is satisfactory.**

C. Customer Satisfaction

In addition to the customer testimony summarized above, we heard testimony from customers about the level of customer service received from the utility. Customers testified for the most part about discolored or black water. There were some complaints of undesirable taste and odor, and insufficient pressure. Some customers testified about the attitude of the utility. This testimony is summarized below.

Representative Fasano testified about Aloha's defensive attitude and lack of helpfulness. He characterized the service as poor and pointed out what he believed to be an effort by Aloha to intimidate its customers into not participating in the legal process. This effort was a newsletter in which Aloha stated that if an appeal of a Public Service Commission order was pursued, it would cost the utility hundreds of thousands of dollars, the cost of which would be passed on to the customers. Representative Fasano reported this newsletter to the Commission and was told that Aloha's claims of potential legal costs were not so exaggerated as to be deceptive. He also characterized Aloha as a company who does not care about its customers.

Customer witness Stingo testified about the expense of installing an irrigation meter. He believed that the water distribution system as it was installed should not have been allowed and caused the installation of an irrigation system to cost more money than it should have.

Customer witness Marden testified about a damaged fire hydrant, and his concerns about fire protection and safety. In late-filed Exhibit 37, Aloha stated that it repaired the hydrant on January 10, 2002.

Customer witness Kurien testified that we should not be bullied by Aloha's claims of meeting DEP standards.

Customer witness Shepherd testified that he believed that Aloha was engaged in foot dragging as a response to water problems.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 17

Customer witness Lane testified that he was in agreement with Representative Fasano about the intimidating newsletter, and that Aloha is not responsive to customer complaints. He stated that when he called to complain about weak pressure, the utility came out, measured it, and said that the existing pressure meets the standard, and that is all they can do. Mr. Lane believes that this was not responsive.

Customer witness Wood testified that Aloha's service is substandard and totally unsatisfactory.

Customer witness Nowack testified that Aloha is very rude to her and to its customers. She also stated that Aloha hangs up on her.

Customer witness Skipper testified that she had written Aloha a letter in the summer and had not gotten any response from them at all.

Customer witness Rifkin testified that he wrote on his bill a note to Mr. Watford that the water is dirty, black, and stinking. Mr. Rifkin never received a response to the note.

Customer witness Lewandowski testified that every time he has called Aloha, they have been nothing more than arrogant, egotistical prima donnas.

Customer witness Brown had questions about how the sewer rate was calculated on his bill and also expressed concerns over Aloha's brand new vehicles. He also had concerns about Aloha's threatening newsletter concerning legal costs being passed on to the ratepayers.

We also heard testimony from the parties concerning customer service. OPC witness Larkin testified that Aloha's water quality does not meet a competitive standard and in a competitive environment would be rejected by customers. It was only because Aloha was a monopoly that it could get away with this level of service and that this Commission must act as a true substitute for competition. He stated that, in a previous docket, there was overwhelming evidence that a vast number of the Seven Springs water customers found Aloha's overall product and service to be

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 18

completely unacceptable. Further, based on the customer testimony that has been presented in the two recent Aloha dockets, vast numbers of customers would go elsewhere if they had a choice. He stated that he has never encountered a higher level of customer dissatisfaction, and that in a competitive environment, Aloha would not be able to raise prices because the quality of its water is below comparable service from other water companies.

Staff witness Durbin testified that during the period between January 1, 1999, and October 31, 2001, the Commission logged 193 complaints against Aloha Utilities. This number of complaints constituted the highest number of complaints per 1,000 customers of any of the similarly sized water and wastewater utility companies reviewed. The similarly sized companies included other Class A and B water and wastewater companies in Pasco County plus other selected Class A companies outside of Pasco County. The review indicated that Aloha had 15.16 complaints per 1,000 customers for the period January 1, 1999, through November 13, 2001. The other companies reviewed ranged from a low of .024 complaints per 1,000 customers by Florida Cities Water Company - Lee County Division, to a high for the other companies of 13.45 complaints per 1,000 customers by Jasmine Lakes Utility Corporation.

Mr. Durbin testified that two of the complaints involved an apparent violation of the Florida Administrative Code or the company tariff. Of these two, one was a complaint in which it appeared that the company had sent the customer an improper bill. The other apparent violation concerned a delay in connection of service in a timely manner. Mr. Durbin testified that the two most common complaints involved high water bills and water quality concerns, including black water complaints. Witness Durbin further testified that Aloha provided a timely response in 92% of the cases that were filed in 1999, 2000, and year-to-date 2001.

Utility witness Watford also testified as to customer satisfaction and stated that the two cases where the utility was found to have done anything wrong averaged out to less than one complaint per year. He believes this to be a very good record. Mr. Watford also testified about the late responses. For five of the alleged eleven late responses, Aloha contends that it was not late in providing a response. In one particular case, he stated that Aloha has a facsimile confirmation that it did in fact file a

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 19

response on the due date. Aloha then sent a confirmation the next day. This second submission was apparently incorrectly logged in as Aloha's response.

In four other cases, Mr. Watford contends that the complaint was sent to Aloha's old fax number after it had moved to its new offices. After finding out about the complaints Aloha asked that the complaints be resent to the new number. In each of these cases, Aloha contends they filed a response in less than the normal 15 days. In at least three of the alleged late response cases, Aloha contends that the Commission's facsimile machine failed to accept a faxed response so it was sent by mail on the due date. Based on these explanations, Mr. Watford testified that he believed there were zero late responses that were not justified.

In addition, witness Watford testified that because witness Durbin did not review the other utilities cited as comparable to Aloha to determine if they were involved in rate proceedings during the time analyzed, that Mr. Durbin's testimony was flawed. Also, no attempt was made to segregate water complaints from sewer complaints, and the period of time chosen for analysis was questionable. For these reasons, he believed that Mr. Durbin's analysis was not a fair representation of Aloha's customer complaint level. Witness Watford also cited this Commission's management audit of Aloha, which stated that Aloha's customers are generally satisfied with Aloha's customer service.

We have reviewed the management audit conducted by our staff, and note that it was based on a very limited number of samples over a very short period of time. As stated in the report on page 19: "The four-question survey was a snapshot of one week of service requests originated during the week of September 26 through October 2, 2000. Staff randomly contacted a judgement [sic] sample of 37 of the 209 customers having interaction with Aloha during the designated period." Even the staff who conducted the audit acknowledged that the survey sample size fell short of being statistically valid. The record shows that the conclusions of the management audit staff that Aloha's customers were generally satisfied with service, timeliness of response and overall handling of customer requests is inconsistent with the multitude of customers who testified almost in one voice about Aloha's poor

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 20

quality of service and the unresponsiveness of Aloha to consumers' complaints.

We find that a significant number of customers have been receiving "black water" from Aloha for over six years, and it is past time for Aloha to do something about it. While the water quality provided meets the DEP standards at the meter, the presence of hydrogen sulfide in the raw water that is converted to sulfates and back into sulfides is not acceptable because this conversion process is one of the factors leading to the creation of copper sulfide in the customers' water. This copper sulfide is the black substance in the water causing the water to be either black or gray in color. Even though Aloha complies with DEP's Lead and Copper Rule, a significant number of Aloha customers experience corrosion in their service piping, which leads to the formation of copper sulfide in their homes.

We also find that a large number of customers had complaints about Aloha's attitude in dealing with its customers. We heard testimony that the utility was arrogant, egotistical, very rude, unresponsive, and acted like prima donnas.

A significant portion of the customers are clearly dissatisfied with Aloha's overall quality of service, and have been for some time. Therefore, we find that the utility is not providing good customer service and the quality of customer service provided by Aloha is unsatisfactory.

Aloha has violated its water use permit with SWFWMD starting in 1994, and consistently since 1996. In addition, Aloha's customers have complained about black water since at least early 1996. Any actions that Aloha has taken to eliminate these problems have come about in response to requirements made by governmental authorities. Moreover, the actions that Aloha has taken have been slow-moving and ineffective. Because of Aloha's long-term problems with black water and other water quality complaints, long-term violation of its consumptive use permit, its lack of a proactive approach to finding acceptable solutions to these problems, and the customer complaints about the attitude of the utility, we find that the overall quality of service provided by Aloha is unsatisfactory.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 21

IV. IMPACT OF UNSATISFACTORY QUALITY OF SERVICE

A. OPC's Competitive Standard Argument

Both Mr. Wood and OPC argue that the utility's entire rate request should be denied due to its poor quality of service. OPC specifically argues that we should adopt a competitive standard for service. OPC witness Larkin argues that Aloha's water quality and service would fail this standard, and testified:

The competitive principle requiring that regulation be a substitute for competition would view both price and service from a competitive standpoint. If the provision of water services were a competitive product, and the customers of the Seven Springs Water Division of the Aloha Utility had a choice, they would clearly reject to deal with Aloha because of the poor quality of the water service provided. Aloha's water quality would not meet a competitive standard, and in a competitive environment would be rejected by customers.

According to OPC, in exchange for taking away the customers' right to choose, Florida laws impose a regulatory framework that acts as a surrogate for the open market. Mr. Larkin testified that "since the customer choice is removed, a strong regulatory process is the only thing that remains to keep the supplier 'honest.'"

OPC argues that:

If Aloha faced any competition, it would lose customers in droves - even at the current rates. At this level of disapproval with its product, if a competitive enterprise were to actually be brazen enough to increase prices, it would assure a mass exodus of its customers.

Under this competitive standard, OPC argues that the expenditures that Aloha is seeking to recover would not be considered to be just or reasonable. According to OPC, Aloha has turned "competitive reality on its head," because Aloha first wants an increase in rates before it will improve its product to a level acceptable to its customers. Mr. Larkin testified that, as in a competitive market, ". . . Aloha should first be required to demonstrate a

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 22

product acceptable to customers, and then be considered for increased rates."

In his testimony, OPC witness Larkin relied on James C. Bonbright's *Principles of Public Utility Rates*, as follows:

Regulation, it is said, is a substitute for competition. Hence its objective should be to compel a regulated enterprise, despite its possession of complete or partial monopoly, to charge rates approximating those which it would charge if free from regulation but subject to the market forces of competition. In short, regulation should be not only a substitute for competition, but a closely imitative substitute.

In conclusion, OPC argued against granting Aloha an increase in rates, stating:

Aloha's customers should not be required to pay higher prices for Aloha's inferior product. The protections of the regulatory process should not be a one-way street. The regulatory process protects Aloha from facing any competition; the regulatory process should also protect Aloha's customers from paying higher prices for an inferior product.

Mr. Wood echoed OPC, stating:

The utility should be denied this increase and all subsequent increases until they can deliver a product that is considered satisfactory to the customer. It should be a product that the customer would buy in the open market.

In response, Aloha argues that pursuant to Section 367.081, Florida Statutes, it is the Commission's "responsibility to set just and reasonable rates . . . ." Moreover, Aloha asserted that "Mr. Larkin could not, or would not, provide any quantitative or other defined basis upon which the Commission could apply his standard for judging a Utility's level of service." Aloha argued that Mr. Larkin admitted that he had done no analysis to determine the level of customer satisfaction for the customer base as a

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 23

whole; that he had done no analysis of the quality of water provided by the utility; and that he based his contention that the utility provided service below a "competitive standard" solely on the basis of the customer complaints of less than 1/10th of 1% of the utility's customers, which he witnessed testify at hearings in this and the prior wastewater rate case, that there was no statute or rule that authorized this Commission to deny a rate increase based upon this undefined standard, and that Mr. Larkin knew of no cases where such a standard had previously been applied.

In its Post-Hearing Brief, Aloha argued:

Mr. Larkin's proposal must be rejected, not only because it is wholly undefined and unclear and based upon only anecdotal and very limited evidence, but also because it is clearly contrary to law and the Commission's responsibility to set just and reasonable rates under the provisions of Section 367.081, Florida Statutes and the underlining [sic] rules of the Commission.

SWFWMD supported a rate increase, and argued that "even if the Commission finds the utility is providing poor quality of service to its customers, a rate increase would support the District's ongoing effort regarding water supply planning and resource protection."

In considering the above arguments, we note that pursuant to Section 367.111(2), Florida Statutes, a public utility must provide:

such safe, efficient, and sufficient service as is prescribed by part VI of Chapter 403 and parts I and II of chapter 373, or rules adopted pursuant thereto; but such service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest. If the Commission finds that a utility has failed to provide its customers with water or wastewater service that meets the standards promulgated by the Department of Environmental Protection or the water management

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 24

districts, the commission may reduce the utility's return on equity until the standards are met.

While the service provided by Aloha appears to meet DEP standards, the question here is whether Aloha operates its system in the public interest. In addition, Section 367.081(2)(a)1., Florida Statutes, provides that we shall "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory," and in every such proceeding, we "shall consider the value and quality of the service and the cost of providing the service." (Emphasis supplied)

OPC witness Larkin's "competitive standard" proposal raises the same question that we have faced many times before, that is, whether we should deny an otherwise warranted rate increase based on either inadequate or inefficient service. To answer the question, we must start with the principle set forth in Bluefield Co. v. Public Service Commission, 262 U.S. 679 (1923). In that case, the United States Supreme Court held:

The just compensation safeguarded to the utility by the Fourteenth Amendment is a reasonable return on the property used at the time that it is being used for the public service. And rates not sufficient to yield that return are confiscatory.

Bluefield at 692.

There are limitations and caveats associated with this principle. We have on several occasions reduced a utility's return on equity or denied a rate increase for mismanagement or inefficient service. For instance, in Gulf Power v. Wilson, 597 So. 2d 270 (Fla. 1992), we reduced Gulf Power's return on equity by 50 basis points from the midpoint of the approved range because of a finding of utility mismanagement. With the reduction, the return was still well within the authorized range. The utility argued that this reduction was an unauthorized penalty and was in contravention of the holdings in Florida Tel. Corp. v. Carter, 70 So. 2d 508 (Fla. 1954), and Deltona Corp. v. Mayo, 342 So. 2d 510 (Fla. 1977). The Supreme Court disagreed and found that this reduction was neither a penalty nor confiscatory, but was merely a recognition of management inefficiency. The Court noted that in

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 25

both Carter and Mayo the Commission had improperly attempted to deny rates such that the rate of return was "well below the range found by the Commission as being fair and reasonable," and that this was not the case in Gulf Power. Gulf Power at 273. According to the Florida Supreme Court, "it is well established that all a regulated public utility is entitled to is 'an opportunity to earn a fair or reasonable rate of return on its invested capital.'" Gulf Power at 273, citing United Tel. Co. v. Mann, 403 So. 2d 962, 966 (Fla. 1981)."

Under Florida law, however, "the public should not be compelled to pay increased rates because of an inefficient system." North Florida Water Company v. Bevis, 302 So. 2d 129, 130 (Fla. 1974). In the North Florida case, the Commission had found that the system contained leaks, that 34.4% of the water pumped was unaccounted for, and that a significant number of meters were stalled and not recording, which led the Commission to deny the requested rate increase. The Florida Supreme Court upheld the Commission's decision to deny a rate increase and concluded:

The fixing of public utility rates necessarily involves a balancing of the public's interest in withholding rate relief because of inadequate service and the utility's interest in obtaining rate increases to finance its necessary service improvement program. The Commission in the instant case found the former interest to be predominant. From our examination of the record, we find the Commission order to be supported by competent substantial evidence.

North Florida at 130.

In making its decision, the Court relied on United Telephone Company of Florida v. Mayo, 215 So. 2d 609 (Fla. 1968), which held that while Section 366.041, Florida Statutes, provides that no public utility shall be denied a reasonable rate of return, it in no manner compels the Commission to grant a rate increase where the applicant's existing service is shown to be inefficient. In United Telephone, the utility sought review of a Commission order that withheld approval of a rate increase until the utility completed its plans for improvements. The Court held that Section 366.041, Florida Statutes, plainly authorized the Commission to withhold

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 26

approval of a rate increase. At the time, Section 366.041, Florida Statutes (1967), provided:

In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state of Florida by any and all public utilities under its jurisdiction, the Florida Public Service Commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered, the value of such service to the public, and the ability of the utility to improve such service and facilities; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings

. . . .

United Telephone at 609. The current ratemaking statute for water and wastewater utilities, Section 367.081(2)(a)1., Florida Statutes, is very similar to the statute quoted above.

United Telephone had also challenged Section 366.041, Florida Statutes, on constitutional grounds, asserting that the statute deprived the utility of property, namely the rate increase, without due process of law. Disagreeing with the utility, the Court held "that the Commission's order is authorized by statute, and the statute was not shown beyond a reasonable doubt to be invalid." United Telephone at 610.

The petitioners in United Telephone had also argued that the law was settled in Carter, whereby the Commission had determined that an 18.359 percent increase was warranted, but that a penalty reduction of approximately twenty-five percent was fair and reasonable in view of inadequate and inefficient service being rendered by the utility. In Carter, the Florida Supreme Court held that the Commission could not authorize an increase in rates and at the same time assess a penalty for inadequate service. In United Telephone, the Florida Supreme Court noted that Section 366.041, Florida Statutes, was enacted subsequent to the Carter decision, and "for ought we know, was intended to overcome the decision." United Telephone at 610.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 27

We have also denied rate increases for other utilities because of poor and inefficient service. Subsequent to the holdings in North Florida and United Telephone, finding problems with record keeping, operations, and unsatisfactory service (which required correction) for systems owned by General Development Utilities, Inc. (GDU), we denied GDU's request for rate relief by Order No. 7407, issued August 27, 1976, in Docket No. 750769-WS. Relying on the decisions in United Telephone and North Florida, we denied a request for reconsideration by GDU. See Order No. 7737, issued April 5, 1977, in Docket No. 750769-WS.

In addition, in Order No. 6750, issued June 26, 1975, in Docket No. R-74736-S, we denied Central Brevard Utilities Corporation's request for a rate increase because:

The utility has not acted in good faith with this Commission or the public they serve, by ignoring the requirements of sewage treatment imposed by Florida law. In view of the inefficiency of their system, the application for a rate increase to Central Brevard Utilities Corporation is hereby denied.

In Order No. 6750, we found that Central Brevard Utilities was:

not complying with the requirements of Chapter 17-4, Florida Administrative Code, for sewer systems and that the customers should not be required to pay an increase in rates to a utility that is not providing service as required by Florida law. Central Brevard Utilities Corporation has not met the sewage treatment standards as required by Florida Statutes for a period of eight (8) years. The utility has not made reasonable efforts to upgrade its operation to meet state standards for sewage treatment.

We believe that the holding of the Florida Supreme Court in Gulf Power is controlling. In that case, the Florida Supreme Court found:

. . . that the Commission's adjustment of Gulf Power's rate of return within the fair rate of return range falls within those powers expressly granted by statute or by

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 28

necessary implication. City of Cape Coral v. GAC Utilities, 281 So. 2d 493 (Fla. 1973). This Court has previously recognized that this authority includes the discretion to reward, within the reasonable rate of return range, for management efficiency. In fact, Gulf Power has in the past received a ten basis point reward for efficient management through its energy conservation efforts. Gulf Power Company v. Cresse, 410 So. 2d 492 (Fla. 1982). We find that, inherent in the authority to adjust for management efficiency is the authority to reduce the rate of return for mismanagement, as long as the resulting rate of return falls within the reasonable range set by the Commission.

Gulf Power at 273.

In this case, the evidence shows that Aloha treats its customers poorly and has made slow progress towards finding a solution for the "black water" problem. Moreover, the evidence does not show that the utility has aggressively sought alternate sources of water. Aloha's only efforts appear to have been limited to seeking an increase in its water use permits (WUPs) (or attempting to have other WUPs transferred to them), using reuse, implementing some conservation measures, and interconnecting with the county. Aloha should have begun aggressively seeking alternate sources of water prior to its consistently exceeding the limits of its WUP in 1996. Moreover, the utility specifically met with SWFWMD to address its noncompliance with its WUP in May of 1997, and other than interconnecting with the county, has secured no alternate source of water which might have proved to be more cost effective.

It is undisputed that Aloha did initially begin the anti-corrosion program as required by DEP and that it is now again below the action levels for DEP's Lead and Copper Rule. Also, Aloha has complied with our requirement to implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in customers' homes. See Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS. However, notwithstanding these

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 29

minimal efforts, the "black water" problem has continued to persist for a significant number of customers since 1996, if not before.

1. Solution to Copper Sulfide Problem

For those customers experiencing "black water," the only absolute "fix" appears to be repiping with CPVC. However, another possible solution is the removal of almost all hydrogen sulfide. While the utility has proceeded with the pilot project as ordered by this Commission and has provided monthly reports as required, the pilot project has lasted for over 18 months, and the record shows that there has been little progression with it since July 2001. The utility states that it is just now ready to begin the final stage of the pilot project, and that the final stage is projected to last anywhere from six to twelve months. We acknowledge that the need for alternate sources to increase the utility's water supply and the possibility that Pasco County may adopt a chloramine process have complicated the utility's search for a process that will correct the "black water" problem and remove hydrogen sulfide from the water. Nevertheless, it is past time for Aloha to take decisive action.

We further note that DEP witness Foster testified that Pasco County had a hydrogen sulfide problem in its water and installed a treatment system to deal with it. According to witness Foster, he has never seen a problem with black water in the county. We believe that if Aloha had committed themselves to a more proactive approach to this problem, and this type of problem having already been addressed by the County, that Aloha had the opportunity to prevent the situation from becoming as bad as it is and possibly eliminate it entirely.

As an initial step to combat the "black water" problem, we note that shortly after Wells Nos. 8 and 9 were placed into service in late 1995, the complaints on "black water" sky-rocketed. OPC witness Bidy suspects that Wells Nos. 8 and 9 have hydrogen sulfide spikes. Also, those wells are the closest to the subdivisions experiencing the worst "black water" problems. Although Aloha's Seven Springs water system is totally interconnected, we believe that any solution to the "black water" problem must begin with Wells Nos. 8 and 9.

ORDER NO. PSC-02-0593-FOF-WU  
DOCKET NO. 010503-WU  
PAGE 30

By Order No. PSC-00-1285-FOF-WS, we required Aloha to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes. Based on the above, the utility shall make improvements starting with Wells Nos. 8 and 9, and then to all of its wells, to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. Such improvements to all of the utility's wells shall be placed into service by no later than December 31, 2003. Moreover, Aloha shall submit a plan within 90 days of the date of the Final Order in this docket showing how it intends to comply with this requirement to remove hydrogen sulfide.

### 2. Return on Equity Set at Minimum

Based on the above, and after considering the value and quality of the service, we find that the utility's rates shall be set to give it the opportunity to earn the minimum of its authorized rate of return in accordance with Gulf Power. We have set the rates at the minimum of the range of return on equity because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries. Our actions are consistent with past decisions in this regard. See Order No. 14931, issued September 11, 1985, in Docket No. 840267-WS, Order No. 17760, issued June 28, 1987, in Docket No. 850646-SU, Order No. 24643, issued June 10, 1991, in Docket No. 910276-WS, and Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS.

### 3. Reduction to President's and Vice-President's Salary

Also, we find the continuing problems with "black water" over at least the last six years, the customers' dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility. Therefore, based on this poor management and mismanagement, the amount allowed for salaries and benefits of both the President and Vice-President shall be reduced by 50%. Based on this adjustment and noting Stipulation No. 13 (double counting of



Rosanne Gervasi, Esquire  
March 29, 2004  
Page 2

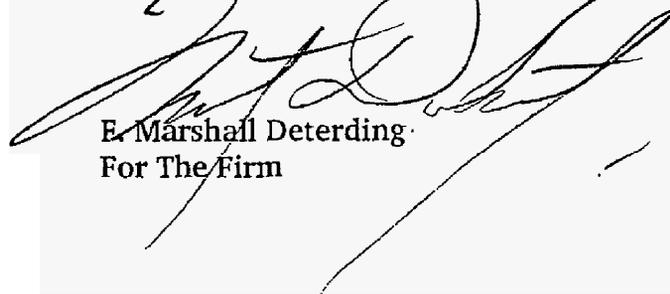
with the various vendors of material, supplies and equipment related to those options.

If the Commission staff intends to utilize any of the information from this report and distribute it at the customer service hearing, we caution you to make sure that its conceptual nature is clearly noted and the major assumptions underlying it are also included.

If you have any further questions in this regard, please do not hesitate to contact me.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP

A large, stylized handwritten signature in black ink, appearing to read 'E. Marshall Deterding', is written over a light gray rectangular background.

E. Marshall Deterding  
For The Firm

FMD\tms

cc: Marshall Willis, CPA  
Mr. Tom Walden  
Stephen Watford, President  
David Porter, P.E.

**Docket 020896-WS  
PSC Letter Dated February 20, 2004  
Staff Data Request  
Data Submission by Aloha Utilities, Inc.**

Due to time constraints, the cost data was developed based on limited data and, therefore, must be considered conceptual in nature. This cost analysis provides a means of comparing the treatment alternatives based on similar design assumptions. More accurate cost information will result from discussing regulatory requirements with the FDEP as the project design work is undertaken.

It has been assumed when preparing these estimates that the PSC Commissioners would revise their Order in Docket 010503-WU to require Aloha to produce a finished water that is consistent with hydrogen sulfide performance standards required by Tampa Bay Water, i.e. that the average concentration of hydrogen sulfide is no more than 0.1 mg/L based on an annual average of 4 quarterly samples collected at the point of entry into the distribution system at each water plant. This limitation is consistent with the goals of Tampa Bay Water which supplies water to numerous water systems in this region as Dr. Levine discusses in her Water Audit Report.

We have assumed that the FDEP required conversion of Aloha's existing water plants from free chlorine disinfection to the sequential use of free chlorine followed by chloramine disinfection to make Aloha's water compatible with Tampa Bay Water/Pasco County water would be required to be completed by January 2005. It is important to note that this date represents a slip from an October 2004 target conversion date provided to Aloha Utilities several months ago by Pasco County. The revised date was only recently provided to Aloha by Pasco County. Therefore, the January 2005 conversion date has been assumed for the purposes of developing the responses herein. As Aloha has discussed with the Staff and the Commission previously, Aloha must convert its water treatment systems to chloramine disinfection by January 2005 to allow its water to be compatible with water supplied by Pasco County (Tampa Bay Water). Therefore, any process chosen for the hydrogen sulfide treatment step must be able to be implemented by January 2005 also.

Each of the options presented, and the related cost data, include the addition of treatment technology to produce a finished water with an average hydrogen sulfide concentration of 0.1 mg/L as described above and to implement the change from free gaseous chlorine disinfection to the use of liquid chlorine (sodium hypochlorite) as a primary disinfectant followed by chloramine as a secondary disinfectant which will be required to be completed as part of the modification of the plants.

Each of the treatment technologies Dr. Levine recommended in her report are capable of reducing the hydrogen sulfide concentration of Aloha's raw water to very low levels. We agree with Dr. Levine that when the hydrogen sulfide concentration of the finished water is reduced, and the other benefits provided by her recommended processes are realized, the potential for water odor and/or color generation in our customer's homes may be reduced.

When developing our response, we felt that it was necessary to consult with Dr. Levine to obtain her council on our application of her recommendations and to insure that our interpretation of her recommendations and our application of them was correct. We have provided her with draft cost estimation documents and draft answers to your questions as we were developing them to allow her to critique our work and to obtain her input. Based on our conversations with Dr. Levine she supports our positions as reported here.

1. Dr. Levine's report presents an excellent overview of each of these technologies, therefore, we will not repeat that information here. Below, we provide our view of what advantages and disadvantages each of the processes proposed by Dr. Levine exhibit in Aloha's opinion:

### Packed Tower Aeration

This process is capable of decreasing the concentration of hydrogen sulfide which naturally occurs in Aloha's well water to meet the goals discussed above. By reducing the pH of the raw water to approximately 6.0 pH units prior to the aeration process, the hydrogen sulfide concentration of the finished water would meet the target concentration utilized by Tampa Bay Water of 0.1 mg/L. The reduction of the hydrogen sulfide concentration by aeration will allow the chloramination process, which will follow the aeration process, to operate more reliably and efficiently. The total quantity of sulfur and sulfur compounds (mostly sulfate and very low levels of elemental sulfur in this case), known as the "total sulfur load," distributed with the finished water will be slightly reduced with this technology. However, the total reduction in total sulfur load will be small compared to the total background load. Also, turbidity can be generated by this treatment technology due to biological growth within the aeration towers. It is important to note that the water that will be provided to Aloha by Tampa Bay Water via Pasco County as supplemental supply starting early next year may at times contain considerably more total sulfur load than the water now produced by Aloha's system. This is because the water produced by the surface water treatment plant owned by Tampa Bay Water reportedly contains sulfate levels much higher than Aloha's water. Therefore, the small reduction in total sulfur load provided by the packed tower aeration system would appear to be of little, if any, measurable benefit. The water pH leaving this process will be increased to a value that may allow Aloha to forgo the use of the corrosion control chemical that it is now required to add to its water. If allowed by FDEP, and if the corrosion control program continues to meet USEPA and FDEP mandates, the reduction in O&M costs associated with addition of the present corrosion control chemical will offset part of the operating cost of this process. The O&M conceptual cost estimates provided for this process assume that the corrosion control chemical will not be required in the future if this process is implemented.

One major disadvantage associated with this process is that it can not be implemented at each of the existing well sites due to space limitations (the process equipment will not fit on the small existing well site parcels). In addition, noise and other environmental factors would likely prevent permitting approval for the installation of this process at the existing sites, the majority of which are located very near residential structures. Therefore, centralization of the water treatment functions into three plants would be required. This centralization requirement will result in higher estimated capital costs for this implementation of this process than any of the other options. The O&M costs associated with this process are also higher than the others. The time required to construct this process will be substantially longer than the time required for hydrogen peroxide oxidation treatment implementation. This is because the centralization of the facilities and construction of three new plants will be very time consuming. This process could not be implemented before the January 2005 deadline when Aloha must have the chloramination (and therefore, new hydrogen sulfide treatment systems) on line to comply with FDEP requirements that its water must be compatible with bulk water provided by Pasco County.

The process will also produce a highly oxygenated water. Some experts have indicated that they believe that high oxygen levels can increase copper corrosion rates, however, others have stated that the increase in oxygen levels may limit the growth of sulfur reducing bacteria (in at least cold water piping) that may lessen the reformation of hydrogen sulfide in homes which may reduce the corrosion of copper piping in the homes. There is merit to both of these positions. The extent to which copper corrosion will be reduced or increased is related to the relative effect of each of these actions, one offsetting the other. The overall effect of the increase in oxygen is therefore not known at this time and will not be known until the process is placed into service if it is chosen. If copper corrosion is lessened, that will be welcomed. If it is increased, then the current or an alternate corrosion inhibitor will be required to be added to the water to offset this new source of corrosion and these facilities would need to be added.

### Hydrogen Peroxide Oxidation

This process is also capable of producing a finished water which will meet the Tampa Bay Water target hydrogen sulfide concentration of 0.1 mg/L when utilized with a chlorine oxidation polishing step. Conceptually, it appears that this process can be implemented where required at the existing well sites. Based on our discussions with Dr. Levine and our very preliminary conceptual process designs, it appears that the hydrogen peroxide oxidation step would be necessary at all wells except wells 1 and 7 and that only the chloramine conversion would need to be added at these sites. The reduction of the hydrogen sulfide concentration by hydrogen peroxide oxidation will allow the chloramination process, which will follow the hydrogen peroxide oxidation process, to operate more reliably and efficiently. As stated above, at this point it appears that this process can be implemented at each of the existing well sites where it is required and that has been assumed to be true for the purposes of this analysis of conceptual feasibility and costs. However, as the design and permitting process proceeds this may change. The capital and O&M costs associated with implementation of this process are relatively small when compared with the other alternatives. The pH of the water leaving this process will be increased to a value that may allow Aloha to forgo the use of the corrosion control chemical that it is required to add to its water. If allowed by FDEP, and if the corrosion control program continues to meet USEPA and FDEP mandates, the reduction in O&M costs associated with addition of the present corrosion control chemical will offset part of the operating cost of this process. The O&M conceptual cost estimates provided herein for this process assume that the corrosion control chemical will not be required in the future if this process is implemented. The oxygen levels of the water produced with this process alternative will be increased slightly. However, that increase will be much less than the oxygen levels expected with the packed tower aeration process. Dr. Levine, in her report, stated that she believed that this smaller level of oxygen concentration increase would limit the growth of sulfur reducing bacteria. We also believe that this is true, especially for cold water home piping systems. Since the oxygen concentration increases would be minimal, it is possible that selection of this process will result in a net reduction in copper pipe corrosion and help to reduce the formation of black water. The extent of this reduction, if any, would not be known until the process is placed into operation if this process is selected.

Because this process utilizes "off-the-shelf" chemical metering pumps and simple steel tanks as process equipment, this process can be implemented by the January 2005 FDEP deadline for Aloha to convert its systems to chloramine disinfection provided no unforeseen issues develop.

The use of hydrogen peroxide for hydrogen sulfide oxidation in drinking water is quite new. It has not been utilized anywhere in Florida for this express purpose previously. However, we have spoken with the FDEP permitting section engineers and, based on those informal discussions, we believe that with some additional bench-top pilot testing this process can be permitted. The total sulfur load of the finished water will not be reduced by the use of this process, however, as noted in the discussion of the packed tower aeration process, it will still be much lower than the sulfur levels associated with water produced by Tampa Bay Water at their surface water treatment plant which will begin flowing into Aloha's water system early next year. Therefore, this fact does not appear to constitute a disadvantage.

### Ozone Oxidation

This process is also capable of producing a finished water which will meet the Tampa Bay Water target hydrogen sulfide concentration of 0.1 mg/L. The reduction of the hydrogen sulfide concentration by ozone oxidation will allow the chloramination process, which will follow the ozone oxidation process, to operate more reliably and efficiently. The capital cost to implement this process is relatively small in comparison with all the other processes being evaluated other than the hydrogen peroxide oxidation process without membrane filtration. Ozone is a toxic gas. It may not be feasible or desirable to construct ozone generation equipment and process off-gas

destruct units at the existing well sites due to the location of many homes very near some of the wells. If it is not feasible or desirable the facilities will need to be centralized. Also, as the design and permitting for this process proceeds it may be determined that the ozone equipment will not fit on the existing sites requiring centralization of the facilities. For purposes of this conceptual analysis it has been assumed that centralization will not be required for this process option. However, that assumption is tenuous. If centralization is required, capital costs for this option would be increased substantially. This would also greatly affect the estimated conceptual rate impacts. Additional operator training and certification is required for the use of ozonation equipment.

The time required to construct this process will be longer than the time required for hydrogen peroxide oxidation treatment. This is because the ozone generators and stainless steel reactors have a longer lead-time between order and delivery and their installation is more complicated. This process can not be implemented before the January 2005 deadline when Aloha must have the chloramination (and therefore, new hydrogen sulfide treatment systems) on-line to comply with FDEP requirements that its water must be compatible with bulk water received from Pasco County.

The total sulfur load of the finished water will not be reduced by the use of this process, however, as noted in the discussion of the packed tower aeration process, it will still be much lower than the water produced by Tampa Bay Water at their surface water treatment plant which will begin flowing into Aloha's water system early next year. Therefore, this fact does not appear to constitute a disadvantage. Based on our discussions with Dr. Levine and our very preliminary conceptual process designs, at this point, it appears that the ozone oxidation step would not be required at wells 1 and 7 and that only the chloramine conversation would be required to be added at these sites. The oxygen levels of the water produced will also be increased, however, much less than with the packed tower aeration process. Dr. Levine, in her report, stated that she believed that this level of oxygen concentration increase would limit the growth of sulfur reducing bacteria. We also believe that this is true, especially for cold water home piping systems. Since the oxygen concentration increases would be only moderate, it is possible that selection of this process will result in a net reduction in water quality problems associated with copper pipe corrosion. The extent of this reduction, if any, would not be known until the process is placed into operation if this process is selected.

#### **Hydrogen Peroxide Oxidation Coupled with Membrane Filtration**

This option adds a membrane filtration (MF) step after the hydrogen peroxide oxidation step. Here the hydrogen peroxide oxidation process would be operated differently than when it is utilized alone so as to produce more elemental sulfur than sulfate. The membrane filters would then remove the elemental sulfur generated during the oxidation step. Utilizing these two processes together in this manner would slightly reduce the overall sulfur load distributed with the finished water. However, since the raw water contains sulfate concentrations that will not be reduced by the process, the overall sulfur load reduction would be minor. Also, as stated earlier, this small sulfur load reduction would be greatly overshadowed by the increase in sulfur load which may be introduced by supplemental water which will be supplied by Pasco County (Tampa Bay Water) starting early next year. Therefore, there appears to be little benefit in adding the membrane filtration step to the hydrogen peroxide oxidation process in Aloha's case.

This process will result in approximately 3% or more (up to 60,000 gallons per day) of the raw water supply being lost as a waste product generated when the filters must be backwashed. This waste must be disposed of at a wastewater treatment plant. The disposal of this waste will require that a sewer connection is available to accommodate this waste disposal. Also, the existing wastewater plant available capacity will be reduced by the quantity of waste generated in this process. The size of the MF units are large and there may not be room to fit them on the existing sites. It may be found, as the engineering of the project begins, that centralization of the treatment systems will be required. For purposes of this conceptual analysis it has been assumed that

centralization will not be required for this process option. However, that assumption is tenuous. If centralization is required, capital costs for this option would be increased substantially. This would also greatly affect the estimated conceptual rate impacts.

Due to the long lead times associated with the membrane filtration equipment and the complexity of the implementation of this process, we do not believe that this process can be implemented by the FDEP deadline for Aloha to modify its plants to disinfect with chloramine.

2. Due to the FDEP requirement that the existing plants be modified to convert from free chlorine disinfection to combined free chlorine and chloramination disinfection by January 2005 at the latest, there is not sufficient time to allow all the various process options to be pilot tested. One of the processes must be selected immediately for implementation, piloted, designed, permitted and constructed as fast as possible if there is any hope in meeting the January 2005 deadline. The hydrogen peroxide oxidation process can be implemented by the required date providing no unforeseen issues develop. All other processes being considered can not be implemented by the required date. The conceptual estimated capital and O&M costs for the hydrogen peroxide oxidation process are also considerably lower than the next less expensive option. Therefore, it would appear to be prudent to pilot test only the hydrogen peroxide process so that final design data could be obtained and forgo pilot testing of the other options that can not be implemented in the allowable time or at a reasonable cost. To pilot test the other options would take many months and hundreds of thousands of dollars for no apparent benefit. We have spoken with Dr. Levine about this issue and she is in agreement with this position.

There was insufficient time for Aloha to be able to develop the actual steps and timeframes you request. To be able to develop this type of information requires much more detailed analysis and discussions with FDEP than could be accomplished in the short time period since your request for information was received. Based on our conceptual analysis of the options (presented in 1 above), our discussions with Dr. Levine about our analysis and the time limitations that exist for the completion of actual construction of one of these options due to the FDEP required chloramine conversion by January 2005, we believe that the only option that is feasible on a cost and time basis is the hydrogen peroxide oxidation process without membrane filtration. Therefore, we took the very limited time available to attempt to determine how long the time frames for this one option were. Based on our very limited and informal meeting with FDEP staff permitting engineers, we estimate that the bench-top piloting of this process may be able to be completed in 4 to 6 weeks. Again, based on very conceptual data, we hope to be able to implement this process by January 2005.

3. Please see our response to your question number 2 for information on why only the hydrogen peroxide oxidation pilot testing costs were developed. The cost of bench-top piloting the hydrogen peroxide oxidation process is conceptually estimated to be less than \$150,000. However, this estimate is based on only very preliminary discussions with FDEP and is therefore subject to change.

We have attached a spreadsheet which provides conceptual estimated capital and O&M cost data for each of the identified options.

4. We have attached worksheets which provide conceptual percentage estimates of the rate impacts for each of the options.
5. Due to the fact that Aloha must modify its existing plants to convert from chlorine disinfection to combined free chlorine and chloramine disinfection by January 2005, the only treatment option recommended by Dr. Levine that appears to be able to be constructed within the time requirements is the hydrogen peroxide oxidation (without membrane filtration) process. This process is the lowest cost alternative from both a conceptual estimated capital cost and conceptual estimated O&M cost perspective. We have described the relative benefits Aloha feels this option affords in our answer to Question 1 above. Aloha and its consulting engineer like all the other experts who have been asked to

give an opinion of the ability of one process over another to “effectively and efficiently correct the black water problem” can not provide an answer to this question. Dr. Levine was not able to make such a statement, the best minds in State service who participated in the PSC sponsored study group could not make such a statement, numerous expert witnesses who gave testimony in the various dockets before the PSC related to this matter could not provide a definitive answer, and neither can Aloha or its consultants. However, having said this, Aloha agrees with Dr. Levine that the hydrogen peroxide oxidation process offers major benefits (as described above in the question 1 answer) and that it may lessen the chance for hydrogen sulfide reformation in the customer’s home piping systems which should lessen the chance for the formation of black water.

6. Please see our answer to number 5 above.

## Seven Springs Water System

### Water Facilities Upgrades Conceptual Estimated Budget Costs

#### Summary Sheet

Treatment Option	Conceptual Capital Cost	Conceptual Incremental O&M Cost
Packed Tower Aeration	\$14,500,000	\$3,100,000
H2O2 Oxidation - Rental	\$3,500,000	\$390,000
H2O2 Oxidation - Purchase	\$4,000,000	\$340,000
Ozone Oxidation	\$6,900,000	\$520,000
H2O2 Oxidation/Membrane Filtration - Rental	\$11,800,000	\$580,000
H2O2 Oxidation/Membrane Filtration - Purchase	\$12,300,000	\$530,000

Notes:

1. Values are only conceptual in nature and subject to change as design and permitting activities are undertaken.
2. Values provided are to be used to compare the relative cost/benefit of one option verses another.
3. No costs are included for engineering, legal, project financing, etc.
4. The costs were developed prior to preliminary and final design engineering and permitting being undertaken, therefore, a number of items can affect the actual capital and/or O&M costs that will be realized. Also, FDEP has recently made major changes to their rules pertaining to water facility design, construction and operation and maintenance requirements. These scope of these requirements is broad; the impact of these FDEP rule requirements has not been included in these costs.
5. The Packed Tower Aeration costs include a number of items such as large storage and high service pumping facilities not included in the other options due to the need to centralize facilities with this option.
6. Once engineering design and permitting is underway, it may be found that the size of the existing well sites may be very limited, or not sufficient which will affect capital and O&M costs.
7. Conceptual Capital Costs rounded to the nearest \$100,000.
8. Conceptual Incremental O&M Costs rounded to the nearest \$10,000.
9. The word "Purchase" means purchase of the H2O2 and pH adjustment equipment. The word "Rental" means lease of the H2O2 and pH adjustment equipment.

ALOHA UTILITIES, INC.  
Estimated Revenue Impact of Water Facilities Upgrades

PACKED TOWER AERATION

1. Depreciation

Conceptual Capital Costs	\$14,500,000 <sup>1</sup> & <sup>2</sup>	
Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
Annual Depreciation Expense		\$ 507,500

2. Return on Added Investment

Conceptual Capital Costs	\$14,500,000 <sup>1</sup> & <sup>2</sup>	
Last Authorized Rate-of-Return	<u>8.52%</u>	
Return on Improvements		1,235,400

3. Conceptual Incremental Annual O&M Costs

		<u>3,100,000</u> <sup>1</sup>
Total Additional Expenses and Return		4,842,900
Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
Total Revenue Impact		\$ 5,071,099
2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>
Percentage Increase in Rates		<u>261.95%</u>

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration equipment, and may therefore increase depreciation expense substantially.

Schedule No. 2

ALOHA UTILITIES, INC.  
Estimated Revenue Impact of Water Facilities Upgrades

H<sub>2</sub>O<sub>2</sub> OXIDATION - RENTAL

1.	<u>Depreciation</u>		
	Conceptual Capital Costs	\$ 3,500,000 <sup>1</sup> & <sup>2</sup>	
	Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
	Annual Depreciation Expense		\$ 122,500
2.	<u>Return on Added Investment</u>		
	Conceptual Capital Costs	\$ 3,500,000 <sup>1</sup> & <sup>2</sup>	
	Last Authorized Rate-of-Return	<u>8.52%</u>	
	Return on Improvements		298,200
3.	<u>Conceptual Incremental Annual O&amp;M Costs</u>		<u>390,000<sup>1</sup></u>
	Total Additional Expenses and Return		\$ 810,700
	Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
	Total Revenue Impact		\$ 848,901
	2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>
	Percentage Increase in Rates		<u>43.85%</u>

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration equipment, and may therefore increase depreciation expense substantially.

ALOHA UTILITIES, INC.  
Estimated Revenue Impact of Water Facilities Upgrades

H<sub>2</sub>O<sub>2</sub> OXIDATION - PURCHASE

1. Depreciation

Conceptual Capital Costs	\$ 4,000,000 <sup>1</sup> & <sup>2</sup>	
Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
Annual Depreciation Expense		\$ 140,000

2. Return on Added Investment

Conceptual Capital Costs	\$ 4,000,000 <sup>1</sup> & <sup>2</sup>	
Last Authorized Rate-of-Return	<u>8.52%</u>	
Return on Improvements		340,800

3. Conceptual Incremental Annual O&M Costs 340,000<sup>1</sup>

Total Additional Expenses and Return		\$ 820,800
Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
Total Revenue Impact		\$ 859,476
2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>

Percentage Increase in Rates 44.40%

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration equipment, and may therefore increase depreciation expense substantially.

ALOHA UTILITIES, INC.  
Estimated Revenue Impact of Water Facilities Upgrades

OZONE OXIDATION

1. Depreciation

Conceptual Capital Costs	\$ 6,900,000 <sup>1 &amp; 2</sup>	
Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
Annual Depreciation Expense		\$ 241,500

2. Return on Added Investment

Conceptual Capital Costs	\$ 6,900,000 <sup>1 &amp; 2</sup>	
Last Authorized Rate-of-Return	<u>8.52%</u>	
Return on Improvements		587,880

3. Conceptual Incremental Annual O&M Costs 520,000<sup>1</sup>

Total Additional Expenses and Return		1,349,380
Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
Total Revenue Impact		\$ 1,412,963
2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>
Percentage Increase in Rates		<u>72.99%</u>

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration

ALOHA UTILITIES, INC.  
Estimated Revenue Impact of Water Facilities Upgrades

H<sub>2</sub>O<sub>2</sub> OXIDATION + MEMBRANE FILTRATION - Rental

1. Depreciation

Conceptual Capital Costs	\$ 11,800,000 <sup>1</sup> & <sup>2</sup>	
Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
Annual Depreciation Expense		\$ 413,000

2. Return on Added Investment

Conceptual Capital Costs	\$ 11,800,000 <sup>1</sup> & <sup>2</sup>	
Last Authorized Rate-of-Return	<u>8.52%</u>	
Return on Improvements		\$ 1,005,360

3. Conceptual Incremental Annual O&M Costs

		<u>580,000</u> <sup>1</sup>
Total Additional Expenses and Return		\$ 1,998,360
Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
Total Revenue Impact		\$ 2,092,524
2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>
Percentage Increase in Rates		<u>108.09%</u>

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration equipment, and may therefore increase depreciation expense substantially.

**ALOHA UTILITIES, INC.**  
**Estimated Revenue Impact of Water Facilities Upgrades**

**H<sub>2</sub>O<sub>2</sub> OXIDATION AND MEMBRANE FILTRATION - PURCHASE**

1. **Depreciation**

Conceptual Capital Costs	\$ 12,300,000 <sup>1</sup> & <sup>2</sup>	
Depreciation Expense	<u>3.5%</u> <sup>3</sup>	
Annual Depreciation Expense		\$ 430,500

2. **Return on Added Investment**

Conceptual Capital Costs	\$ 12,300,000 <sup>1</sup> & <sup>2</sup>	
Last Authorized Rate-of-Return	<u>8.52%</u>	
Return on Improvements		1,047,960

3. **Conceptual Incremental Annual O&M Costs**

		<u>530,000<sup>1</sup></u>
Total Additional Expenses and Return		\$ 2,008,460
Regulatory Assessment Fee Expansion Factor	÷	<u>.955</u>
Total Revenue Impact		\$ 2,103,099
2002 Seven Springs Annualized Water Revenue		<u>\$ 1,935,872</u>

Percentage Increase in Rates 108.64%

<sup>1</sup> The estimates of capital costs and O&M costs may change significantly, once permitting requirements and the other DEP requirements are known and considered. In addition, centralization of water plant facilities may be required to implement most of the treatment processes evaluated. In the case of packed tower aeration, such centralization requirement is definite and the related costs have therefore been included in this conceptual analysis. While centralization is likely with regard to the addition of ozone treatment and any membrane filtration, such centralization costs have not been included in this conceptual analysis because the requirement for centralization in those cases is not conclusive. No centralization costs have been considered with regard to the H<sub>2</sub>O<sub>2</sub> oxidation treatment alternative without membrane filtration, because it is currently believed that centralization will not be necessary for those treatment options alone.

Estimated conceptual O&M costs for each of the alternative treatment methods do not include additional income taxes, property taxes, insurance expenses, etc. associated with any of the alternative treatment changes discussed in these analyses. Only estimates of direct labor, chemicals and electric have been undertaken to calculate the conceptual incremental annual O&M costs.

<sup>2</sup> The Utility will also incur engineering, legal and other costs related to design, permitting and construction of the above components. These have not been included in the estimated conceptual capital costs.

<sup>3</sup> We have utilized for simplicity a 3.5% composite depreciation rate in calculating the rough estimate of revenue impact of the various alternatives. Component depreciation rates may also yield a different depreciation expense, especially with regard to short lived items like membrane filtration equipment, and may therefore increase depreciation expense substantially.

Prior Territory Deletion/Certificate Revocation Cases

Section 367.111(1), Florida Statutes, authorizes the Commission to amend a utility's certificate of authorization to delete an area not served or not properly served by the utility, or it may rescind the utility's certificate of authorization, upon a finding that the extension of service could be accomplished only at an unreasonable cost and that addition of the deleted area to that of another utility company is economical and feasible. The Commission has revoked the certificates of a utility under this provision, in conjunction with Section 367.165, Florida Statutes, which provides that "[i]t is the intent of the Legislature that water or wastewater service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility." Order No. PSC-94-0976-FOF-WS, issued August 11, 1994, in Docket No. 930944-WS, In Re: Revocation by Florida Public Service Commission of Certificates Nos. 451-W and 382-S Issued to SHADY OAKS MOBILE-MODULAR ESTATES, INC. in Pasco County, Pursuant to Section 367.111(1), F.S.

In fact, there are several examples of cases in which the Commission has revoked or deleted territory from a water or wastewater utility's certificates, albeit not resulting from customer petitions for deletion of territory due to a "black water" problem. See, e.g., Order No. 15638, issued February 7, 1986, in Docket No. 860033-WU, In Re: Revocation of Certificate No. 432-W for West Mobile Village Water System in Volusia County, Florida (finding that the utility was unable to provide service, had no known prospects of resuming service in the future, and had noticed its intent to abandon); Order No. 20781, issued February 20, 1989, in Docket No. 871308-WU, In Re: Initiation of show cause proceedings against, and investigation into possible overearnings by, Sebring Country Estates Water Company in Highlands County (finding that the quality of service was unsatisfactory, that there was no indication that the utility would make DER-required improvements to its system, and that the utility failed to show cause why its certificate should not be revoked); and Order No. 20884, issued March 13, 1989, in Docket No. 881075-SU, In Re: Service investigation of Lanier Utility Commission in Pasco County (finding of abandonment of the utility without notice to the Commission).

By Order No. PSC-94-1476-FOF-SU, issued December 1, 1994, in Docket No. 940229-SU, In Re: Petition by Residents of Betmar Acres to be deleted from territory in Pasco County served by Betmar Utilities, Inc., the Commission, among other things, granted Betmar's motion to dismiss the customers' deletion petition upon finding that the situation did not fall under the provisions of Section 367.111, Florida Statutes. Nor did it involve a Section 367.045, Florida Statutes, certificate dispute or dispute over the inability of a utility to provide service. Rather, the situation involved a disagreement over the implementation of Section 381.00655, Florida Statutes, which required mandatory hook-up of septic tanks to regional wastewater systems under certain conditions. The Commission found that it was not the appropriate forum for resolving disputes arising under Chapter 381, Florida Statutes, and that therefore the petition failed to state a cause of action upon which relief could be granted. Id. at 7-8.

Nevertheless, in the Betmar case, Betmar argued in its motion to dismiss that Chapter 367, Florida Statutes, does not provide a mechanism by which the residents of a certificated area may request to be deleted. Id. at 6. The Commission agreed that its operating statutes do not expressly provide for such a mechanism. However, the Commission opined that this does not mean that it could never consider such an option. In fact, the Commission stated that

[i]f the circumstances warrant such action, we believe that the Commission has the authority, pursuant to the general public policy provisions of Section 367.011, Florida Statutes, to consider granting a customer's deletion request. In fact, the Commission, on its own motion, pursuant to Section 367.111, Florida Statutes, could delete a portion of a utility's service territory, if we find that certain conditions with respect to service have not occurred.

Id. at 7.

Finally, Section 367.161(2), Florida Statutes, provides that the Commission has the power to amend, suspend, or revoke any certificate of authorization issued by it when the subject utility is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the Commission or any provision of Chapter 367, Florida Statutes. By Order No. PSC-00-1376-PCO-WS, issued July 31, 2000, in Docket No. 991632-WS, In Re: Application for original certificate to operate water and wastewater utility in Bay County by Dana Utility Corporation, the Commission found that

[w]e recently stated in Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, in Docket No. 990080-WS, that "[r]evocation of certificate proceedings are reserved for cases of severe violations of Commission rules." Further, revocation is only sought after all other efforts to bring the utility into compliance with Commission rules have failed. (Id. at 7). Since revocation is the most severe sanction that can be brought against a utility, it has been our past practice to utilize revocation sparingly and as a sanction of last resort.

See also Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, in Docket No. 990080-WS, In Re: Complaint and request for hearing by Linda J. McKenna and 54 petitioners regarding unfair rates and charges of Shangri-La by the Lake Utilities, Inc. in Lake County (finding that the issues raised in the complaint did not rise to the level that would invoke certificate revocation proceedings, and that revocation of the certificates was unnecessary to address the customers' concerns).



## PASCO COUNTY, FLORIDA

DADE CITY (352) 521-4274  
LAND O'LAKES (813) 996-7341  
WEST PASCO (727) 847-8115  
FAX (727) 815-7010

COUNTY ADMINISTRATOR'S OFFICE  
WEST PASCO GOVERNMENT CENTER  
7530 LITTLE ROAD, SUITE 340  
NEW PORT RICHEY, FL 34654  
E-MAIL: [pcadmin@pascocountyfl.net](mailto:pcadmin@pascocountyfl.net)

### Hand Delivery

May 14, 2004

Roseanne Gervasi, Senior Attorney, and  
John Williams, Senior Analyst  
Office of the General Council  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0863

RE: Docket #020896-WS – Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County

Dear Ms. Gervasi and Mr. Williams:

Please accept this letter as Pasco County's response to your May 10, 2004, letter. We are pleased to be able to provide information that may assist the Florida Public Service Commission (FPSC) in a resolving a matter important to the citizens of Pasco County.

For clarity, we have quoted your questions in italics below, followed by our response.

*Question 1: Has the County offered to purchase Aloha Utilities, Inc. (Aloha)?*

Answer: As part of a Board of County Commissioners initiative, we contacted all of the private water and wastewater utilities in Pasco County about selling to the County. We have enclosed our original "Letter of Interest" dated July 20, 2000, and the Aloha Utilities response letter dated May 26, 2001. The Aloha response states in part "the owners are simply in no way interested in even discussing with Pasco County the potential sale of their system."

*Question 2: Would the County be willing to purchase all or a portion of Aloha if the Florida Public Service Commission were to determine that Aloha is unwilling or unable to provide adequate service to all or to a portion of its currently certificated territory?*

Answer: Assuming the Aloha system or a portion of it was for sale, Pasco County is ready, willing and able to pursue a purchase. As outlined in our July 20, 2000, letter, we have previously established a standard protocol with terms and conditions for such a purchase. (Our detailed Terms and Conditions sheet is also attached). The Board

Roseanne Gervasi, Senior Attorney, and  
John Williams, Senior Analyst  
May 14, 2004  
Page 2

of County Commissioners on May 11, 2004, discussed the issues surrounding Aloha and directed me to respond to your questions. As you know, numerous legal issues arise regarding the customers' petition for deletion. Legally, a transfer of utility customers or service area can only occur under certain scenarios: (1) a willing sale by the utility owner; (2) exercise of the power of eminent domain; (3) a lease arrangement; or (4) a court ordered sale from a receivership to the highest bidder after the utility owner has abandoned the utility or the PSC has revoked the certificate(s) to operate causing an abandonment.

*Question 3: Has the County made any plans to provide water and wastewater service on a retail basis in the Seven Springs – Trinity areas of the County?*

**Answer:** We have not developed any plans to provide retail service within the certificated service area of Aloha Utilities, nor do we think it proper to make plans to serve any area that is currently being served by another utility. However, we currently provide retail water and wastewater services to our customers in the Seven Springs/Trinity developments, which are adjacent to Aloha's certificated service area.

*Question 4: Please provide a brief description of what would be involved in running lines to serve those customers.*

**Answer:** Assuming that ownership of the system would be legally transferred, water transmission mains or wastewater collection systems could be run from Pasco County's nearby mains to interconnect with the existing pipes connecting the individual homes within the area that would be served. We cannot at this time, however, describe the infrastructure needed without additional information about the areas that may be served. Generally, when we have legal authority to serve an area, we would conduct a hydraulic modeling analysis to determine line capacities and thereafter prepare a preliminary design of line extensions or any necessary upgrades of our existing lines.

*Question 5: Does the County have any plans to use its eminent domain powers to acquire all or a part of Aloha?*

**Answer:** No. It is the policy of Pasco County to pursue the acquisition of private utilities only when the utility is willing to transfer ownership.

*Question 6: Have the Pasco County Commissioners directed their staff to evaluate the feasibility of providing utility services to the Seven Springs – Trinity areas of the County that are currently served by Aloha?*

**Answer:** No, however, the Pasco County Board of County Commissioners, has indicated a willingness to assist the PSC in this matter. Furthermore, we do not have enough information regarding the area that is the subject of the petition to perform an evaluation.

Roseanne Gervasi, Senior Attorney, and  
John Williams, Senior Analyst  
May 14, 2004  
Page 3

*Question 7: Please provide an estimate of the costs the customers would incur in order to connect to the County's water and/or wastewater system.*

**Answer:** As explained in the response to Question 4 above, the County is not able to determine specifically what would be involved for the County to provide service to those certain customers if the County were to purchase the portions of the Aloha system that serve those customers since the particular physical area contemplated by the subject petition for deletion is not clear. Accordingly, costs cannot be estimated.

If you have any comments or additional questions, please contact us.

Sincerely,



John J. Gallagher  
County Administrator

JJG/lb

cc: The Honorable Michael Fasano, Representative, House of Representatives  
Steve Watford, Aloha Utilities, Inc., 6915 Perrine Ranch Road, New Port Richey, FL 34655  
Pasco County Board of County Commissioners  
Robert D. Sumner, County Attorney  
Douglas S. Bramlett, Assistant County Administrator (Utilities Services)



# PASCO COUNTY, FLORIDA

## OFFICE OF THE COUNTY ATTORNEY

**Robert D. Sumner**  
County Attorney

**Barbara L. Wilhite**  
Chief Assistant County Attorney

**W. Elizabeth Blair**  
**Edward B. Cole**  
**Patricia J. Hakes**  
**Sidney W. Kilgore**  
**Richard T. Tschantz**  
**Debra M. Zampetti**

July 20, 2000

Mr. Stephen G. Watford  
President  
Aloha Utilities, Inc.  
2514 Aloha Place  
Holiday, Florida 34691-3499

Re: Water and Sewage Utility System

Dear Mr. Watford:

This office has been advised that Aloha Utilities, Inc. is the owner of a private water and sewage utility system.

This letter is to advise you that I have been instructed by the Pasco County Board of County Commissioners to determine whether you have any interest in selling your utility company to Pasco County.

Any purchase by the County would require the acquisition of all of the assets of your company as well as its service area. The general limits of any agreed purchase price of the system would be as follows:

1. The water and sewage system must meet or exceed all Department of Environmental Protection and all other regulatory standards and requirements, and if not, sufficient monies will be withheld to bring the system up to current standards.
2. There will be no value placed upon the system, which would place any value on future connections to the system.
3. The rates for water and sewage as approved and established by the Public Service Commission must be sufficient to provide adequate reserves and retirement of revenue bonds over a 20-year period of time at current interest rates or those rates in effect at the time of the sale of the bonds and purchase of the system.

74

July 20, 2000

Re: Water and Sewage Utility System  
Page Two

4. The value established must be verified by engineering and appraisal reports by a professional approved by the County.

5. Complete in detail the attached questionnaire. Please note that in order for any interest to be expressed as to the sale of the system, it is necessary that I receive a response to this letter within sixty (60) days from the date of this letter.

6. Certify that the information contained in the questionnaire is true and accurate to the best of your knowledge and belief.

7. Return the completed questionnaire to Douglas S. Bramlett, Assistant County Administrator, Utilities Service Branch, Public Works/Utilities Building, Suite 213, 7530 Little Road, New Port Richey, Florida 34654-5598.

Please feel free to call me to discuss this matter.

Very truly yours,



Robert D. Sumner  
County Attorney

RDS:lp  
Enclosure

cc: Douglas S. Bramlett, Assistant County Administrator, Utilities (w/enclosure)

**The Following Is a Questionnaire Which We Request That  
You Complete and Return to Pasco County If You Are Interested  
In Purchase of Your Utility System by Pasco County**

1. What is the current name and address of your utility?
2. Provide the Florida Public Service Commission Permit or License Number. Also, include the latest annual report which states your base rate value of the utility and your PSC approved user charge schedule.
3. Provide copies of the current Florida Department of Environmental Protection (FDEP) operating permits for your wastewater treatment and potable water plants.
4. Provide copies of any and all FDEP citations, warning letters, notices of violation, or consent orders in the past ten years.
5. What is your current number of customers as listed below:

Single Family	_____	Industrial	_____
Multifamily	_____	Commercial	_____
Mobile Home	_____	Medical	_____
Recreation Vehicle	_____		
6. If you have established a purchase price to be considered by Pasco County, provide in detail the method of value you used and your engineering analysis of current conditions of the system.
7. Provide in detail all engineering drawings and plans which show the following items:
  - Miles or feet of all water mains, gravity sewer mains, and force mains and all diameters of pipe.
  - Number and locations of all sewer manholes, pump stations, valves, pressure-relief valves, and all service laterals.
  - Number and locations of all water meters, backflow prevention devices, valves, and service laterals.
8. All logs, information, and letters on file which provide the type and number of citizen complaints over the past five years.
9. Provide a printout of all customer accounts which shows payment history and delinquent accounts for the past two years.
10. Provide a list of current employees and their respective positions and responsibilities.
11. Provide detailed information of any utility debts owed, mortgages, liens, etc., and the names and addresses of such debt holders.

LAW OFFICES  
ROSE, SUNDSTROM & BENTLEY, LLP  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

Attachment D  
Page 7 of 12

MAY 29 2001

IRIS H. BENTLEY, P.A.  
MARSHALL DEFENDING  
MARTIN S. FRIEDMAN, P.A.  
DIN R. JENKINS, P.A.  
JEFFREY T. MINDLIN, P.A.  
JOSEPH P. PATTON  
AREN L. SHIPPY, LL.M. TAX  
WILLIAM E. SUNDSTROM, P.A.  
JANE D. TREMOR, P.A.  
JIM L. WHARTON

MAILING ADDRESS  
POST OFFICE BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

ROBERT M. C. ROSE  
OF COUNSEL

May 26, 2001

Gerald Hartman, P.E.  
Hartman & Associates  
201 East Pine Street, Suite 1000  
Orlando, Florida 32801

Re: Pasco County

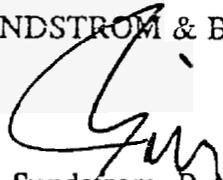
Dear Gerry:

I understand that you will be representing Pasco County relative to the potential purchase of some of the private utilities in the County.

This letter will confirm that the assets of neither Aloha Utilities nor those of Utilities Inc. of Florida are available for purchase by the County. Thus, do not bother either collecting or seeking information on these systems, requesting permission to inspect such facilities, or anything of that nature. The owners are simply in no way interested in even discussing with Pasco County the potential sale of their systems.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP

  
William E. Sundstrom, P.A.  
For the Firm

WES:tmg

cc: Mr. John Gallagher  
Mr. Stephen Watford  
Mr. Jim Camaren  
Mr. Don Rasmussen

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**PASCO COUNTY  
PRELIMINARY TERMS AND CONDITIONS FOR UTILITY ACQUISITION**

**I. DUE DILIGENCE EVALUATION**

1. All contracts, customer service agreements, developer agreements, and other agreements for service shall be provided to County. If a contract is non-assignable, the Utility shall provide a listing of all such contracts and agreements and note specifically which ones will be assigned to the County at closing.
  
2. Utility shall allow County to perform inspections of the assets and have access to records that will assist the County in its acquisition. Such inspections include, but are not limited to, Engineering and Financial Due Diligence and Environmental Site Assessments on the assets a shall occur prior to execution of the terms and conditions for purchase. The Utility shall provide, at no cost to the County, information required to perform such utility inspections. Such information includes but is not limited to:
  - Record Drawings/Site Plans
  - Detailed Service Area Map
  - Developer/Service Agreements with all third parties
  - Utility Rate Tariff (current and prior)
  - Four years Annual Reports filed with the FPSC
  - Fixed Assets Listing, including details regarding General Plant
  - Operating/Construction/Water Use Permits and any regulatory order or action items
  - Listing of Employees by Title and total compensation, including benefits
  - Listing of insurance coverage on facilities
  - Billing register/Account History by Rate Code and any bill frequency reports prepared by Utility
  - Capital Improvement Plan and information regarding construction work in progress
  
3. Forty-five days prior to closing a specific listing and information concerning all vendors, vendor accounts, corporate name, location and billing addresses, account status as contracts outstanding (dollars), amount spent to date, accounts payable and due, and any agreements for vendors to provide services shall be provided by Utility to County.

**II. UTILITY TRANSACTION REQUIREMENTS**  
**County Responsibilities**

4. County shall pay for documentary stamps, and recording costs.

5. County shall pay for Environmental Site Assessments.
6. The County will be responsible for the preparation for and presentation of the public hearing required by Chapter 125, Florida Statutes and that both the County and Utility will attend a customer meeting (public) prior to the public hearing to present the plan of acquisition for customer input and support.

#### **Utility Responsibilities**

7. Utility must renew all expired permits or correct system deficiencies in such permits if there is a regulatory order or demand in existence. Utility transfers all permits and rights associated with such permits to the County. Deficiencies could be corrected by connection to the County system(s) at time of closing or as a condition of closing, which will be considered a capital deficiency and reflected in the purchase price determination.
8. Utility shall satisfy all liens, encumbrances and/or title problems prior to date of closing to assure the County of free and clear title.
9. Utility representatives will conduct themselves in an appropriate fashion through transfer, will operate the system in compliance with all regulatory agencies, and will not reduce the value of the Utility in any manner through the date of transfer.
10. Utility staff will be available for transition activities for up to six months after the closing. Availability shall mean, specific staff, will be identified by name, address telephone number and each specific staff member shall be so employed or contracted to be available on-site within a two hour notice of need.
11. Utility shall provide for a minimum of one month materials, supplies, and consumables to be transferred to the County at closing to provide for the continued operation of the Utility without a change in level of service or impacting regulatory compliances. Utility shall provide a listing of such materials, supplies and consumables and amounts of each 30 days prior to closing and the amounts shall be field verified by County at closing.
12. Utility shall pay its taxes including payroll, property, intangible, and income taxes up to and including closing.
13. Utility shall maintain insurance and shall indemnify County up to and including closing.
14. Utility represents it has proper authority to sell utility assets.

15. That rolling stock, moveable equipment, laboratory equipment, tools, accessories, and appurtenances shall be inventoried and delineated by Utility as to which items would be paid for by and transferred to County.
16. Utility shall disclose any and all litigation and legal actions to which it is a party. The dispensation of such litigation and legal actions shall remain the liability of Utility.
17. Utility shall petition for the transfer of the FPSC certificate. The cost of such transfer shall be paid by Utility.
18. Utility shall assist County in obtaining the transfer of all permits. The cost of such transfers shall be paid for by the County.
19. Utility shall pay for title search and title policy and other costs of closing.
20. One Hundred Twenty (120) days prior to closing, Utility shall provide for a complete billing register and billing information of the customers of the system in File Transfer Protocol (FTP) format. Utility shall cooperate with the County to integrate the billing information into the County's system.
21. Utility shall pay for surveys and legal descriptions for the real property assets and other investigation necessary for closing.

### III. UTILITY TRANSACTION ACTIVITIES

22. County pays Utility \$ \_\_\_\_\_ cash at closing.
23. Bill of Sale provided for all assets.
24. All necessary easements, land rights, or other utility rights transferred which are necessary for the operation and maintenance of the utility system shall be transferred to the County.
25. A minimum of 10% of the purchase price will be held in escrow for 18 months after closing. County may utilize such escrowed funds to correct latent defects after closing. Such defects shall be defined as a hidden, not apparent or unobserved defect. Such defect may be the result of faulty of substandard material, manufacturing, construction, pollution or other reason that existed prior to the closing date. Substandard material shall be defined as materials that are not in accordance with Pasco County, FDEP, AWWA, and WEF standards latest revision for water and wastewater utility systems.
26. The value of outstanding prepaid connections shall be deducted from the purchase price, which will be inventoried and accounted for prior to closing. The Utility shall provide an accounting of all reserved but unused capacity and whether

supported by the reservation analysis to any outstanding developer agreements and to the provision of such developers paying guaranteed revenues to hold such capacity.

27. All customer deposits will be transferred at closing which will include any interest earnings accrued on each customer deposit.
28. Accounts receivable at closing will be collected by County and transferred back to Utility for a period of ninety (90) days after closing. The County shall read all meters at the time of closing to establish a clear line of ownership of the revenues.
29. All vendor invoices incurred (billed or unbilled) for services rendered or attributable to the Utility prior to closing will be the responsibility of the Utility except for services which are incurred in a period which crosses owners will be allocated on a prorated basis.
30. The transaction is an asset purchase. Any debt, liability, balance of loan payment, or other instrument of indebtedness shall remain the sole liability of Utility.
31. Transaction is on an "as is, where is" basis, subject to modifications from the latent defect escrow account.
32. Each party shall pay for their own representative fees and costs associated with the acquisition due diligence, preparation and execution of purchase and sale documents, and closing costs.
33. It is contemplated that no construction work in progress will be on going at the time of closing. To the extent that such construction projects are necessary for the continued proper operation and management of the system, such projects shall be delineated by Utility. Utility shall be responsible for the completion of such projects and full payment of all contractor invoices or alternatively the Utility shall provide complete funding for the completion of the project to the County.
34. The terms represent a memorandum of understanding between the parties but are not a contract for the purchase of the Utility by the County and the County shall not be bound by these terms and conditions until final execution of a contract by the County.
35. All records, reports, drawings, and related documents for the management, operation, and service to customers in the Utility's total service area, including all record drawings and operations and maintenance manuals shall be provided to the County. All accounting information shall also be provided which shall at a minimum include the following:
  - General ledger of the Utility at year end and most recent month
  - Fixed assets listing at year-end and most recent month
  - Payroll records for employees

- Schedules of property, plant and equipment insurance
  - Information of property taxes and other taxes other than income
  - Copy of last four years of annual reports submitted to the Florida Public Service Commission (FPSC)
  - Listing of prepaid expenses
  - Summary and reconciliation of all cash accounts
  - Supporting documentation of specific expense items
  - Copies of last four years Federal income tax forms
36. The Utility is not a foreign person as defined by US tax laws.
37. Except as disclosed by Environmental Site Assessments, the Utility has not violated federal, state, or local pollution laws

**WATER RATES EFFECTIVE OCTOBER 1, 2003**

<b><u>Pasco County Water Rates</u></b>		<b><u>Aloha Utilities, Inc.</u></b>	
<b>Meter Size</b>	<b>BFC</b>	<b>BFC</b>	
5/8 & 3/4	\$ 4.50	\$4.10/6.16	
1 & 1-1/4	11.25	10.26	
1 1/2	22.50	20.54	
2	36.00	NA	
<b>Consumption</b>	<b>/1000 Gallon</b>	<b>Consumption</b>	<b>/1000 Gallon</b>
0 – 6,000	\$1.98	0 – 10,000	\$1.41
6,001 – 15,000	2.63	>10,000	\$1.75
15,001-30,000	3.29		
>30,000	3.94		
<b>Bulk Water Sales:</b>		<b>Bulk Water Sales:</b>	
With Storage	\$2.41/kgal	NA	
Without Storage	\$2.65/kgal		
Capital Recovery Surcharge	\$0.68/kgal		
<b>Service Installation Fee</b>		<b>Plant Capacity Fee Per ERC</b>	
3/4	\$250.00	\$1,000	
1	250.00		
1 1/2	350.00		
2	740.00		
<b>Meter Installation Fee</b>		<b>Meter Installation Fee</b>	
3/4	\$110.00	\$ 50.00	
1	150.00	111.61	
1 1/2	370.00	178.34	
2	375.00	Actual Cost	

**WATER RATES EFFECTIVE OCTOBER 1, 2004**

<b><u>Pasco County Water Rates</u></b>		<b><u>Aloha Utilities, Inc.</u></b>	
<b>Meter Size</b>	<b>BFC</b>	<b>BFC</b>	
5/8 & 3/4	\$ 5.01	\$4.10/6.16	
1 & 1-1/4	12.53	10.26	
1 1/2	25.05	20.54	
2	40.08	NA	
<b>Consumption</b>	<b>/1000 Gallon</b>	<b>Consumption</b>	<b>/1000 Gallon</b>
0 – 6,000	\$2.10	0 – 10,000	\$1.41
6,001 – 15,000	2.78	>10,000	\$1.75
15,001-30,000	3.48		
>30,000	4.16		
<b>Bulk Water Sales:</b>		<b>Bulk Water Sales:</b>	
With Storage	\$2.70/kgal	NA	
Without Storage	\$2.95/kgal		
Capital Recovery Surcharge	\$0.68/kgal		
<b>Service Installation Fee</b>		<b>Plant Capacity Fee Per ERC</b>	
3/4	\$260.00	\$1,000	
1	260.00		
1 1/2	370.00		
2	760.00		
<b>Meter Installation Fee</b>		<b>Meter Installation Fee</b>	
3/4	\$ 112.00	\$ 50.00	
1	155.00	111.61	
1 1/2	375.00	178.34	
2	381.00	Actual Cost	

### Mechanics of Cost Recovery Clause for Repiping of Homes

Staff considered recommending the allowance of recovery from the general body of the Seven Springs system ratepayers through a cost recovery clause calculated as a rate per k/gallon on all customers' bills, similar to the cost recovery clauses that are common in the electric and gas industries. Like energy conservation, pipe replacements may benefit the general body of ratepayers by reducing water usage. Many customers noted that they have often had to let water run for several minutes to clear the black residue and obtain clean water. If customers did not have to run excessive water to clear the black water, it would reduce usage in total and lessen the overall strain on the water supply. Conversely, it is also possible that customers would use more water if the quality of the water improves, since many customers currently purchase significant amounts of bottled water. However, a cost recovery charge would make increased usage more expensive, which could have a dampening effect on increased usage.

The mechanics of administering a cost-recovery clause are as follows. The recovery factor would be initially set for a projected six month period, then reviewed at least annually. The utility would file quarterly reports detailing (1) the number of participants in the rebate program; (2) the cost incurred to date by the utility for rebates; (3) the current balance in the regulatory asset account; and (4) the dollars recovered to date through the clause. During an annual review, any true-ups resulting from over or under recovery from the preceding 12-month period would be included in the calculation of the factor for the next 12-month period.

The factor would be reviewed and revised, at either the utility's or the Commission's request, no more frequently than at six month intervals to ensure that the factor reflected the actual costs incurred by the utility for the rebate program. For example, if participation increased significantly or if costs were written off more quickly than projected, the factor would under- or over-recover actual costs and would be adjusted accordingly. The rebate program would be filed as a separate tariff, reflecting all the terms and conditions for participating in the rebate program and the recovery factor, and would be reflected in the otherwise applicable gallonage charge on the customer's bill. The utility would provide, prior to any adjustment to the level of the recovery factor, written notice to all customers of the proposed change no later than the beginning of the billing cycle during which the new charge would be implemented.