

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991643-SU
:
APPLICATION FOR INCREASE IN :
WASTEWATER RATES IN SEVEN :
SPRINGS SYSTEM IN PASCO :
COUNTY BY ALOHA UTILITIES, :
INC. :

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VOLUME 7

Pages 834 through 1034

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ

DATE: Thursday, November 2, 2000

TIME: Commenced at 8:00 a.m.
Concluded at 4:58 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Bureau Chief, Bureau of Reporting
Official Commission Reporter



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ROBERT C. NIXON

was called as a witness on behalf of Aloha Utilities, Inc. and, having been duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. BURGESS:

Q Mr. Nixon, you are familiar with the infiltrating and in-flow reduction program, is that correct?

A Generally, yes.

Q You are listed as one of the witnesses -- identified as one of the witnesses to address that, and I assume it is from the accounting side, from the financial side?

A To the extent we included a dollar amount in the MFRs, that's it. I'm not a witness on any of the technical aspects of it.

Q Right, I understand that. And my questions are limited to the dollars that are included in the MFRs. Do you have amounts included for expenditures during the projected test year?

A Yes.

Q And when did the projected test year begin?

1 A Well, there are three test years here. There is
2 a historic test year in September of '99, an intermediate
3 period ending September 30th, 2000, and an as projected to
4 2001.

5 Q It is the projected that I am interested in.
6 Are there expenditures for the II reduction program in the
7 projected test year 2001?

8 A Yes.

9 Q Is it -- and those reflect anticipated
10 expenditures that will actually be encountered by the
11 utility during this time frame?

12 A Yes. On Page 144 of the MFRs, we have projected
13 an expenditure of \$15,000 a month, and that totals
14 \$180,000 in the projected test year.

15 Q And that anticipates activities that you
16 anticipate will continue on for the next 11 months?

17 A Yes.

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

19 COMMISSIONER JACOBS: Staff.

20 CROSS EXAMINATION

21 BY MR. FUDGE:

22 Q Mr. Nixon, you have recommended capitalizing
23 items that were previously expensed, correct?

24 A Yes.

25 Q Is it your position that these costs have not

1 been recovered?

2 A It is my position that this is a correction of
3 an error. I don't think it is -- I think the question of
4 whether they have been recovered or not recovered, and to
5 a big extent the information I have on Exhibit 5 is
6 irrelevant. I don't think correction of the error, if we
7 look back, would have caused any excessive overearnings.
8 I think what we are dealing with here is a policy question
9 about correction of errors.

10 Q But have you recovered those costs or not?

11 A No, I don't think we have.

12 Q So you are trying to recover these costs again?

13 A No, I don't think we have recovered them.

14 Q I'm sorry, I guess I didn't hear your first
15 response. You said you didn't recover it?

16 A That is correct.

17 Q So you are now trying to recover those costs
18 through future rates?

19 A We are asking that we be allowed to earn a rate
20 of return on the depreciated investment for items that
21 were previously expensed in error.

22 Q So, in essence, you are trying to recover
23 through future rates a past loss?

24 A No, I don't think so. We are just -- we are
25 correcting an error.

1 Q Okay. Generally, what is the purpose of the
2 utility's plant capacity charges?

3 A The purpose of plant capacity charges is to
4 provide -- historically it has been to provide a financing
5 mechanism to help offset part of the cost of capital in
6 the water and sewer industry.

7 Q One of the utility's reasons for filing this
8 rate application was to recover a cost for upgrading their
9 wastewater system from 1.2 million gallons to 1.6 million
10 gallons per day, correct?

11 A Yes.

12 Q Would you agree that this upgrade was to
13 accommodate future customer connections in the Seven
14 Springs service area?

15 A It will to a degree.

16 Q So would you agree that a portion of the cost of
17 this upgrade will be covered through plant capacity
18 charges?

19 A To the extent new customers are added and served
20 by that plant, yes.

21 Q Are you familiar with Rule 25-30.580, Florida
22 Administrative Code, entitled guidelines for designing
23 service availability policy?

24 A Yes.

25 Q Is it correct that this rule states that the

1 maximum amount of CIAC net of amortization should not
2 exceed 75 percent of the total original cost net of
3 accumulated depreciation of the utility's facilities and
4 plant when the facilities and plant are at their design
5 capacity?

6 A Yes.

7 Q If the utility's projected CIAC ratio as of
8 September 30th, 2001 is less than 75 percent, would it be
9 appropriate for the Commission to revise the utility's
10 plant capacity charge at a 75 percent ratio for the 1.6
11 million gallon-per-day plant capacity?

12 A Certainly.

13 MR. FUDGE: Mr. Fletcher is now going to pass
14 out Aloha's Response to Staff's Production of Document
15 Request Number 1. I would like to have this marked as
16 Exhibit 24.

17 COMMISSIONER JACOBS: Very well. Show this
18 marked as Exhibit 24.

19 MR. BURGESS: May I ask what Exhibit 23 is?

20 COMMISSIONER JACOBS: Twenty-three is the
21 supplement to Mr. Nixon's rebuttal, RCN-3 that was passed
22 out.

23 MR. BURGESS: Then I'm in real trouble. May I
24 ask what 22 is?

25 COMMISSIONER JACOBS: Twenty-two is the

1 composite of his other rebuttal exhibits.

2 MR. BURGESS: Thank you very much.

3 (Exhibit 24 marked for identification.)

4 BY MR. FUDGE:

5 Q Mr. Nixon, would you agree that the regulatory
6 treatment of an item outlined in an order issued in 1980
7 could be superseded by the regulatory treatment of the
8 same item outlined in an order issued in 1985?

9 A I'm sorry, I don't understand the question.

10 Q If the Commission took a certain stance on
11 regulatory treatment in 1980 and issued an order, would a
12 subsequent order issued in 1985 supersede that earlier
13 order?

14 A If it truly changed the Commission's policy,
15 yes.

16 Q Is it correct that under the full gross-up
17 method the debit deferred taxes would be fully offset by
18 the contributed taxes?

19 A Yes, that has been -- that is the position in my
20 testimony that that is where the offset that Commissioner
21 Jaber inquired about last month occurs.

22 Q In Aloha's case is it correct that the reason
23 why debit deferred taxes are not fully offset by the
24 contributed taxes is because Aloha did not begin
25 amortizing the contributed taxes in the year received?

1 A That is the primary reason, yes.

2 MR. FUDGE: Mr. Fletcher is now going to pass
3 out a copy of the financing agreement with Bank of America
4 provided in response to Staff's Production of Document
5 Request Number 1. I would like to have this marked as
6 Exhibit 25.

7 COMMISSIONER JACOBS: We will mark this as
8 Exhibit 25.

9 (Exhibit 25 marked for identification.)

10 MR. DETERDING: Commissioner, just for
11 clarification, is the staff intending to ask Mr. Nixon
12 some questions about Exhibit 24? I mean, they passed out
13 an exhibit and asked that it be marked, and unless I
14 missed it, there wasn't even a question asked of Mr. Nixon
15 about whether he prepared this, or knew anything about
16 this, or agreed with this, or anything else.

17 COMMISSIONER JACOBS: Staff.

18 BY MR. FUDGE:

19 Q Mr. Nixon, did you prepare this response to
20 Production of Document Number 1, Exhibit 24?

21 A I didn't prepare it. It was prepared by someone
22 who works for me. And I guess I am the one sponsoring it.

23 Q Did you review it?

24 A Yes.

25 Q Okay. And it shows a breakdown of the CIAC

1 between the water system and the wastewater system?

2 A It shows the breakdown of deferred taxes between
3 each system.

4 Q Okay, thank you. Are you familiar with the
5 utility's loan with the Bank of America, the subject of
6 Exhibit 25?

7 A Not in great detail, no.

8 Q Do you know that the covenants of this loan
9 require the utility to have all of its systems audited?

10 A Yes.

11 Q Is it correct that the loan was guaranteed with
12 the revenues of all the utility's systems?

13 A I believe that is correct. But the purpose of
14 the loan was to do the construction that is the subject of
15 this rate case, that is the Seven Springs Wastewater area.

16 Q Would you agree that all the utility's systems
17 benefit from the annual financial audit?

18 A I don't think I would agree with that.

19 Q Why not?

20 A Because Aloha would prefer not to have an audit
21 at all. It was imposed as a condition of obtaining a loan
22 for the wastewater treatment plant expansion and upgrade.
23 I don't see any benefit at all to the other three
24 divisions.

25 Q But doesn't the audit make sure that the books

1 and records are in compliance?

2 A Sure it does, for the benefit of the Seven
3 Springs wastewater customers and the loan obtained to
4 finance the improvements.

5 Q And to show that the revenues guaranteed for the
6 loan are being recovered through all the systems?

7 A It shows that, but it is of no benefit to the
8 Seven Springs water customers or the Aloha Garden's
9 customers. They are not benefitting at all by the
10 proceeds of the loan or from the audit.

11 Q The cost of the audit would be recorded in the
12 contractual services accounting expense account as defined
13 by the NARUC Uniform System of Account, is that correct?

14 A Yes.

15 Q Is it correct that the utility allocates its
16 contractual services accounting expenses to all of its
17 systems based on the ERCs?

18 A That is not a true blanket statement. Items
19 that benefit all four divisions which cannot be
20 specifically identified are allocated based on ERCs.
21 Where an expense can be specifically identified, that is
22 charged to that division.

23 Q Is it correct that you have testified that Mr.
24 McPherson's recommended adjustment to contractual services
25 accounting for nonrecurring expenses associated with the

1 review of the general ledger and billing software system
2 is not appropriate?

3 A I agree it is not appropriate.

4 Q And is your basis for disagreement with this
5 adjustment is that these expenses were part of your firm's
6 recurring review of the utility's financial statements?

7 A I believe, as I explain in my rebuttal
8 testimony, the change over in software prevented us from
9 doing our semi-annual review. Instead, we were working
10 with the client to produce financial statements on a
11 general ledger. And my testimony is that to the extent
12 any expenses were incurred with the software conversion,
13 they simply took the place of our semi-annual review, and
14 that an adjustment proposed by Mr. McPherson is not
15 appropriate, especially in light of the fact that we will
16 have work to do in conjunction with the quarterly
17 unaudited financial statements required by the bank loan.

18 Q How often does the utility replace its general
19 billing and ledger software?

20 A Well, not too often. We have only had one Y2K
21 incident. Hopefully, the software they have now will last
22 quite awhile.

23 Q Would not the implementation of a new software
24 system be generally nonrecurring in expenditure?

25 A It would be for that particular item, but if you

1 make that adjustment, you are not recognizing the other
2 expenses that are normal and recurring, including our
3 semi-annual review and the new work required for the bank
4 with the quarterly statement, so I don't think an
5 adjustment is appropriate.

6 Q On Page 13, Lines 15 through 19 of your rebuttal
7 testimony, is it correct that you suggest that Mr. Larkin
8 should have concluded that with an inexperienced
9 controller that the CPA firm would have to spend more time
10 with her?

11 A Excuse me, what line, please?

12 Q Fifteen through 19.

13 A Yes. My testimony is that Mr. Larkin understood
14 the experience background of Ms. Vinyard (phonetic) and
15 her predecessor, he should have logically concluded that
16 the CPA firm might be asked to assist the new
17 inexperienced controller to a greater extent than the
18 experienced former controller.

19 Q Would you expect that the same level of
20 assistance would continue from year to year?

21 A I would unless Aloha adds a couple more staff
22 people to their accounting department.

23 Q But if the main reason for assisting her is her
24 inexperience, wouldn't she eventually gain that experience
25 and thus the need for assistance diminish?

1 A No, because we are assisting the inexperienced
2 controller to the same degree we were assisting the
3 experienced controller. So I don't -- there is not a
4 change in our involvement.

5 Q According to Schedule B8C, Page 54 of the MFRs,
6 the salaries and wages employees was increased for new
7 employees required by DEP, is that correct?

8 A Could you give me that reference again.

9 Q It's Page 54 of the MFRs entitled Schedule B-8C.

10 A Yes.

11 Q Exhibit 6 is your deposition and late-filed
12 exhibits. Are the items listed as advertising on Exhibit
13 RCN-4 for these new employees required by DEP?

14 A I'm sorry, I'm not understanding the questions.
15 I'm sorry.

16 COMMISSIONER JABER: You can't hear them,
17 either, can you?

18 THE WITNESS: No, I can't hear them.

19 COMMISSIONER JABER: Jason, I'm having the same
20 trouble. You need to talk slowly and right into the
21 microphone. We can't hear some of the words you say.

22 BY MR. FUDGE:

23 Q Mr. Nixon, will you please turn to your rebuttal
24 testimony, RCN-4?

25 A Okay.

1 Q Are the items listed as advertising expenses for
2 these new employees required by DEP?

3 A Yes, that is the -- those are the positions, and
4 I believe these expenses will be continuing and recurring.
5 The DEP requirements made Aloha go to 24-hour-a-day, 7
6 day-a-week operations. So you have shift work involved.
7 It is very hard to get people to work for long periods of
8 time as shift operators. In fact, many of the people that
9 were hired have left, and the company continues to incur
10 these expenses.

11 COMMISSIONER JACOBS: Did I understand your
12 earlier question to say that certain salary increases were
13 mandated by DEP?

14 MR. FUDGE: That was Mr. Nixon's testimony as
15 shown in his Schedule B-8C.

16 COMMISSIONER JACOBS: For what reason, Mr.
17 Nixon, do they require salary increases?

18 THE WITNESS: Commissioner, they were new
19 positions required by 7-day-a-week, 24-hour-a-day
20 operation. And I believe his last question to me was
21 whether the miscellaneous expense on my Exhibit 4 related
22 to hiring those positions required by the DEP order.

23 COMMISSIONER JACOBS: I understand.

24 COMMISSIONER JABER: Well, let me understand.
25 Did DEP require you to hire the new positions, or did DEP

1 require monitoring to be 24/7?

2 THE WITNESS: My understanding is they required
3 actual staffing people there on shifts at the plant
4 operating it 24-hours-a-day, 7-days-a-week.

5 COMMISSIONER JABER: Did the DEP consent final
6 judgment direct Aloha to hire staff to be there for the
7 shifts 24/7?

8 THE WITNESS: You would have to ask Mr. Watford.
9 I'm not sure it says that specifically in the consent
10 order. It may specifically state that in the operating
11 permit, which was issued in order to comply with the
12 consent order. But it was certainly a change in
13 operations, though it did not have the personnel necessary
14 to comply with that part of the order or operating permit.

15 MR. FUDGE: Mr. Nixon, Mr. Fletcher is now
16 going to hand out the utility's response to Staff's
17 Interrogatory Number 11. I would like to have this
18 identified as Exhibit 26.

19 COMMISSIONER JACOBS: We will mark this as
20 Exhibit 26, title Response to Interrogatory 11?

21 MR. FUDGE: Yes, Commissioner.

22 (Exhibit 26 marked for identification.)

23 BY MR. FUDGE:

24 Q Mr. Nixon, did you prepare this response?

25 A Yes, I did. I would add if we could -- just to

1 save time, I have agreed that a shorter life should be
2 used, and I think I have an exhibit in here.

3 Q Is that RCN-6?

4 A Yes.

5 Q And the purpose of this exhibit is to clarify
6 the shorter time frame?

7 A Yes. I believe Mr. Larkin proposed just using
8 the composite CIAC amortization rate as it exists
9 currently. And I don't have any trouble changing the
10 rate, but we are talking about a rate to amortize
11 contributed taxes, and those contributed taxes were
12 received during the period 1987 through 1996. And my
13 recommendation in my testimony is that we use the
14 composite rate of the assets and the CIAC received during
15 that period CIAC was taxable.

16 Q Does Aloha's amortization rate for CIAC change
17 each year?

18 A Yes.

19 Q Is it correct that you have testified that to
20 use the current rate for CIAC distorts the true
21 depreciable life of these contributed taxes?

22 A That is correct, because the contributed tax
23 amount doesn't change. It was collected. It is in a
24 separate account and it was collected during the period
25 CIAC was taxable. So I believe proper matching requires

1 that you use a rate that was in effect for those years.
2 If you use the current rate, the amortization rate is
3 distorted because Aloha has added a lot of reuse plant,
4 pumping plant, and so forth which distorts the true
5 amortization rate, because the assets they have added have
6 shorter lives.

7 Q If Aloha had started amortizing its contributed
8 taxes when they were received, wouldn't the amortization
9 rate match those of the CIAC?

10 A I'm not sure. You would always have a
11 difference there because we couldn't begin amortizing
12 those contributed taxes until we have received an order
13 from the PSC telling us how much of the gross-up we needed
14 to pay the tax versus how much we had to refund. Those
15 amounts were in a -- were used to pay tax. And any
16 unspent amounts were in an escrow account. So it's hard
17 to get an exact match if you changed that every year.

18 Q Assume that a utility collected plant capacity
19 fees during the first five years of initiation of service,
20 and had not collected them since. Would you limit the
21 amortization rate to the depreciation rate of plant for
22 just those first five years?

23 A If they didn't collect any more after that?

24 Q Yes.

25 A Yes, I would.

1 Q But wouldn't the NARUC Uniform System of
2 Accounts require you to change the amortization rate for
3 plant capacity charges for each year based on the
4 composite plant balances?

5 A I'm not sure that is a requirement of the NARUC
6 Uniform System or whether that is a function of the
7 Commission's rule on depreciation. I would have to review
8 the Uniform System of Accounts before I could agree or
9 disagree.

10 Q Please turn to Page 62 of your rebuttal
11 testimony. Is the base year the same as the test year?

12 A No, I think the base year is referring to the
13 historic test year.

14 Q Whenever you are using a historic test year
15 setting rates, is that correct?

16 A No. In this case from the rule quoted, this
17 portion of the rule is dealing with those schedules that
18 you need to duplicate or not duplicate for the historic
19 year or any projected years. And I believe the term base
20 year as it is used here is the historic year in a
21 projected test year setting.

22 COMMISSIONER JACOBS: Mr. Fudge, how close are
23 you to completion? Do you have much more?

24 MR. FUDGE: Yes, Commissioner.

25 COMMISSIONER JACOBS: Okay. Why don't we go

1 ahead and take a break. And we will come back at 11:15.

2 (Recess.)

3 COMMISSIONER JACOBS: Let's go back on the
4 record.

5 Mr. Fudge, you may continue.

6 BY MR. FUDGE:

7 Q Mr. Nixon, does Rule 25-30.437, Subsection 3,
8 refer to a historical base year or historical test year
9 when referring to projected test year?

10 A I think that the historical base year, or
11 historical base year and the base year are synonymous.

12 Q What is the approved test year for Aloha's rate
13 case in this docket?

14 A The historic test year?

15 Q The approved test year.

16 A It is the historic year September 30th projected
17 through September 30th, 2001.

18 Q The test year for calculating rates, is that
19 September 30th, 2001?

20 A Yes, year-ended.

21 Q Would you please turn to Page 54 of the revised
22 MFRs?

23 A Okay.

24 Q Please read the first sentence of the
25 explanation of this form for the record?

1 A "Explanation: Complete the following comparison
2 of the applicant's current and prior test year O&M
3 expenses before this Commission. Provide an explanation
4 of all differences which are not attributable to the
5 change in customer growth and the CPI-U. If the applicant
6 has not had a previous rate case, use the year five years
7 prior to the test year for comparison. Provide an
8 additional schedule, if necessary, to explain
9 differences."

10 Q Thank you. This sentence does not state base
11 year, correct?

12 A No, because there is no designation as that term
13 is used on Page 62 of my testimony. If you flip back
14 through other pages in the standard MFR form, you are
15 going to see two little boxes there, one labelled historic
16 and one labelled projected. That is the designation
17 referred to in the rule that I quoted in my testimony.

18 Q And in the underlying section in your testimony
19 it states that if no designation is shown on a schedule,
20 submit that schedule for the test year only, correct?

21 A That is correct. And I believe that refers to
22 the base year. It has to when you read that quote in
23 context.

24 Q But doesn't that quote talk about projected test
25 year, correct?

1 A The reason for the quote in the language is to
2 determine which schedules out of these MFRs have to be
3 duplicated for your historic base year, your intermediate
4 year and your projected year. If there is no designation
5 on the schedule, and there is not one on this schedule,
6 the meaning of that as it has always been interpreted,
7 because I was on the committee with the Florida Waterworks
8 Association that met with Marshall and Trish in designing
9 these MFR forms, that is the purpose of this section of
10 the rule so that a company doesn't have to fill out three
11 pages of schedules for every single page in the blank MFR
12 form. And I believe when they used the word submit that
13 schedule for the test year only they are referring to the
14 historic test year and not the projected test year.

15 Q But the rule doesn't refer to a historic test
16 year, it refers to a base year.

17 A That's true. I mean, the language could be
18 clearer, but I think in my testimony I explained what the
19 purpose of this rule was and the context in which it
20 should be understood.

21 Q So are you saying in the underlying portion
22 where it says test year only, they really meant base year
23 only?

24 A They should have used base year or historic test
25 year only. And I think the correctness of that

1 interpretation can be seen by turning to other pages in
2 this schedule where information is only presented for the
3 historic test year.

4 Q On Schedule B-8, in Column 3, can you tell us
5 what that column states?

6 A B-8?

7 Q Yes. I think it's on Page 54. It's B-8C.

8 A It says current test year.

9 Q And the current test year that you have down
10 there is September 30TH, 1999. But your actual test year
11 is September 30th, 2001, is that correct?

12 A Yes. That is just the way this form from the
13 Commission reads. But you still don't see the designation
14 referred to. Maybe I can explain it like this. If you
15 turn, for example, to Page 41, and I just picked this at
16 random, that is Schedule B-2 which is a schedule of net
17 operating income. You do see a designation on that
18 schedule. You see, actually, two designations, interim
19 and a little box, final, a little box, and intermediate.
20 Underneath that you have historic and you have projected.
21 My experience in helping to put together the MFR form
22 several years ago, and the way it was interpreted in other
23 projected test year rate cases I have put together, is
24 that if this designation is not on a schedule, the
25 information is presented for the historic period only.

1 On Page 41 we do have that designation, so we
2 presented the information for all three periods. Over on
3 Page 54, you don't have that designation. So when we
4 originally filed the MFRs, we only made a comparison of
5 the current historic test year expenses to the expenses in
6 the last rate case.

7 Q But the underlying portion of the rule that is
8 in your testimony does not say historic test year only, it
9 says test year only, is that correct?

10 A That's what it says. And I have given you my
11 interpretation. I can't give you any more on that.

12 Q Did you call staff to see what their
13 interpretation was?

14 A Yes, I believe I did. When we got the
15 deficiency letter, I believe I talked to Marshall Willis.
16 And he said he believed that schedules for all three
17 periods were needed, so we went ahead that the point in
18 time and prepared them. But that is still different from
19 MFRs I have prepared before in projected test years where
20 we only prepared this schedule for the historic test year
21 and they were accepted.

22 Q Would you please turn to Ms. Merchant's Exhibit
23 PWM-3?

24 A Okay.

25 Q Concerning Section B-2 of that exhibit, it

1 addresses the CIAC amount of 908,563 in matching funds.
2 On Page 63, Line 24, through Page 64, Line 1 of your
3 rebuttal, you state that the methodology was described
4 adequately on Schedule G-1. Please refer to Lines 14
5 through 18 on Page 1 of 5 of Exhibit RCN-17.

6 A Okay.

7 Q Does this schedule detail to what project or
8 projects the \$710,764 of Southwest Florida Water
9 Management District matching funds relates to?

10 A I believe it does.

11 Q Where does that show the matching funds were
12 allocated?

13 A Well, if I can read this, on Line 14, and this
14 is from my Exhibit 17, which is a copy of the basis of
15 projections as originally filed, we say beginning on Line
16 14 also two projects were completed in September of 1999.
17 The first phase of the Little Road Project and Phase 3 of
18 the reuse force main extension to the Fox Hollow Golf
19 Course, and I give the amount, 1,458,000. And then on the
20 next sentence I say, "The company has received matching
21 funds from the Southwest Florida Water Management District
22 in the amount of \$710,764."

23 Q Was that amount applied to the Little Road
24 Project or the Fox Hollow Golf Course?

25 A No, it applies to the Phase 3 of the reuse force

1 main extension. I believe that is obvious.

2 Q Is that because that sentence that states the
3 company has received matching funds immediately follows
4 the proceeding sentence that says Phase 3 of the reuse
5 force main?

6 A Yes, sir. And then I go on to say in the next
7 sentence that the extension to Heritage Springs will also
8 receive SWFMD funds totalling \$197,799, and that the
9 amounts have been booked as CIAC.

10 Q But how do you know that the 710,000 was not
11 allocated to the Little Road Project?

12 A Because Aloha filed a limited proceeding to
13 recover costs on the Little Road Project which were the
14 subject of a docket. It should be obvious to anyone
15 reading this that they don't receive SWFMD matching funds
16 for line relocations.

17 Q On Page 64, Lines 5 through 7 of your rebuttal
18 you state that the methodology concerning the five year
19 average was described adequately on Schedule G-1. Would
20 you please refer to Lines 28 through 30 on Page 1 of 5 of
21 Exhibit RCN-17?

22 A Yes.

23 Q Did the original MFRs reflect the calculation of
24 your five-year average?

25 A The calculation itself wasn't shown. We explain

1 the methodology used to project property CIAC, which I
2 believe conforms to what is required in the rule.

3 Q Well, does it show what five-year period is
4 being referenced?

5 A It doesn't specifically say that. It is meant
6 to convey the most recent five-year period.

7 Q The calendar year or the ending test year of
8 September 30th?

9 A I believe those were based on the calendar year,
10 subject to check. But, again, I don't think that is a
11 basis for rejecting the explanation of how it was done as
12 a material nondisclosure of the methodology. As I say in
13 my testimony, we could have shown the PSC auditors exactly
14 the calculation from our workpapers and avoided presenting
15 more information on this.

16 Q But the Commission staff does not know what
17 five-year period you are referencing and how the monthly
18 additions of contributed property were projected, do they?

19 A I will agree the five-year period is not
20 specified. As I mentioned, it was intended to mean the
21 most recent five years, just like the information on
22 Schedule F-10 is the most recent five years.

23 I think the only people that would not know that
24 we were talking about the most recent five-year period
25 would be perhaps someone unfamiliar with the PSC and their

1 procedures.

2 Q In Section B-4 of Exhibit PWM-3, Ms. Merchant
3 addresses the projected plant capacity fees and charges.
4 And in your rebuttal testimony you state that the
5 methodology was adequately explained. Would you please
6 read Lines 24 through 27 of Exhibit RCN-17?

7 A Yes. CIAC was projected through September 30th,
8 2000 and September 30th, 2001 based on the current
9 approved service availability charges and estimated growth
10 of 370 ERCs in 2000, and 349 in 2001. Such growth factors
11 were based on the progression analysis as shown on
12 Schedule F-10.

13 Q Does this schedule reflect whether projected
14 CIAC was spread evenly over the months or specifically
15 adjusted for any of the months?

16 A It doesn't show that, but it still adequately
17 explains the basis of the projection.

18 Q Please turn to this new Schedule G-5 on Page 154
19 of your revised MFRs.

20 A Okay.

21 Q Can you please explain how to calculate the
22 total capacity charge additions of 122,972 for year ended
23 9/30/99? I mean, 2000. A total is on Line 37.

24 A As the note on that schedule says, for the
25 months of October and November '99, the actual capacity

1 charges collected were used. We did that because by the
2 time we were preparing these MFRs we had actual data. And
3 then the note on that schedule goes on to explain that the
4 projected capacity charges were based on ERCs. It shows
5 the number of ERCs.

6 Q But going back to your Exhibit RCN-17, it
7 doesn't explain that the actual amounts collected were
8 charged in October or November, does it?

9 A No, it doesn't say that on there. But, again,
10 it is a minor point.

11 Q Okay. Would you please turn to Page 3 of
12 Exhibit RCN-16. This is an invoice sent to Aloha for
13 services rendered during December of '99.

14 A What was the page reference?

15 Q Page 3.

16 A Okay.

17 Q Ms. Binford is going to pass out a letter dated
18 September 6th, 2000, which is from Mr. Wharton to Mr.
19 Jaeger supplying the late-filed deposition exhibits. Is
20 this a copy of that same invoice in your exhibit?

21 A Yes.

22 Q Looking at the coded amounts written on the
23 invoice, could one infer that these amounts were expensed?

24 A Yes.

25 Q Was that a yes?

1 A Yes.

2 Q Thank you. Will you please turn to Page 22 of
3 Exhibit 16. This is an invoice sent to Aloha for services
4 rendered during April 2000, is that correct?

5 A Well, let me back up. I presume these
6 handwritten codings total the \$8,867. And if they were
7 expensed an adjusting entry was made to pull that and we
8 set an account up for deferred rate case expense. So, I
9 wouldn't infer too much from the fact that the original
10 coding expensed these items, because it was corrected
11 later.

12 Q You're saying it was corrected later to a
13 deferred account?

14 A Yes.

15 MR. FUDGE: Well, then we need a late-filed
16 exhibit showing that it was corrected later.

17 COMMISSIONER JACOBS: Do you want to mark that?

18 MR. FUDGE: Yes, Commissioner. We also need to
19 mark the letter that was just passed out.

20 COMMISSIONER JACOBS: Okay. We will mark this
21 letter dated September 6th, 2000, as Exhibit 27, and mark
22 as Exhibit 28 a late-filed, and do you want to give a
23 description?

24 MR. FUDGE: Showing deferral of amounts
25 expensed.

1 COMMISSIONER JACOBS: Of what type of expense?

2 MR. FUDGE: Rate case expense.

3 COMMISSIONER JABER: Chairman Jacobs, while
4 staff gets you a title, let me ask Mr. Nixon, maybe this
5 will help staff, too. Where were the corrections
6 reflected?

7 THE WITNESS: On the general ledger. They were
8 corrected by the time the PSC auditors got there, because
9 they were able to follow the deferred amount of rate case
10 expense for this docket.

11 COMMISSIONER JABER: Are those corrections
12 reflected anywhere in this docket already?

13 THE WITNESS: Yes, ma'am.

14 COMMISSIONER JABER: Where are they?

15 THE WITNESS: For this docket, we assumed all
16 the rate case expense was deferred independently of what
17 was done initially on the books.

18 MR. FUDGE: We don't see how it is reflected, so
19 we still need a schedule of the adjusting entry showing
20 how it was corrected.

21 COMMISSIONER JACOBS: Proceed.

22 (Exhibit 27 and 28 marked for identification.)

23 MR. FUDGE: Mr. Nixon, please turn to Page 24 of
24 Exhibit RCN-16.

25 COMMISSIONER JACOBS: That is not the

1 supplement, is it?

2 MR. FUDGE: No, it was originally filed with his
3 rebuttal.

4 BY MR. FUDGE:

5 Q According to this, you charged 2.5 hours of work
6 for reviewing a staff recommendation on April 10th, 2000.
7 This item is further described as interim rate case, is
8 that correct?

9 A I'm sorry, are you on Page 24 of 95?

10 Q It's at the top of the page, Account Number 245,
11 where it says review staff recommendation.

12 A Okay, thank you.

13 Q And on pencil it says interim rates RC.

14 A Yes.

15 Q And that was for reviewing the interim
16 recommendation in this docket, is that correct?

17 A That's correct.

18 Q Are you aware that staff did not file its
19 recommendation for interim rates in this docket until May
20 4th, 2000?

21 A Well, then I have a miscoding here, if that is
22 the case.

23 Q Mr. Nixon, are you also the analyst for a rate
24 case involving Indiantown Company, Incorporated?

25 A I was a consultant on that case, yes.

1 Q Are you aware that the interim recommendation
2 for Indiantown was filed on April 6th, 2000?

3 A I don't remember. Subject to check, if you have
4 that.

5 Q Yes. Ms. Binford will pass out a copy of the
6 recommendation showing the issue date.

7 A This is dated May 4th.

8 Q There is two of them in front of you, I think.

9 A Okay. It says April 6th.

10 Q So could the charge on April 10th be to review
11 the Indiantown recommendation?

12 A I'm not sure. It's possible. It's
13 possible that -- I know we had several discussions about
14 interim rates early on with staff and OPC. This could
15 have been related to that. Part of my work related to
16 that was trying to quantify the additional operating
17 expenses we had beginning in January 1999. So it could be
18 part of that. I'm just not ready to say that this was
19 part of the Indiantown case at this point.

20 Q But if it was for conferences with staff and
21 OPC, why would it be reflected in an account entitled
22 review staff recommendation?

23 A Well, like I said, it was probably miscoded. We
24 really don't have that much of a problem in our firm with
25 miscoding among clients, because at this point in time I

1 was working on the Aloha case pretty much full-time as was
2 the two associates that work for me. I would be glad to
3 go back and see if that is true. I mean, I don't want to
4 recover rate case expense if it is not appropriate, but
5 I'm just not ready to tell you at this point or agree with
6 you that this relates to Indiantown.

7 Q Mr. Nixon, how many pages of the original MFRs
8 had typos?

9 A How many pages?

10 Q Yes. Just an estimate.

11 A I don't know. There were, I would say, 25 or
12 30. Computers are a wonderful thing. We had corrected
13 all of those typos, but apparently we didn't save the
14 changes, and so we got printed out, and what got bound was
15 the schedules with the typos before we made the changes.

16 Q So did the write-offs and 10 percent discount
17 that you applied to rate case expense include copying and
18 binding costs for correcting these errors?

19 A Yes, sir.

20 Q On what areas of your rebuttal testimony did you
21 spend the most time?

22 A Probably the most time was on this new and novel
23 suggestion that gross-up or tax impact charge should be
24 treated as CIAC when it goes against every order on the
25 subject issued by the Commission.

1 Q Do you know how many hours you spent writing the
2 of your rebuttal regarding MFR deficiencies?

3 A Well, I dictated this testimony after I got back
4 from the Appalachian Trail. As I recall, it took about
5 four -- the whole thing to finish the rebuttal took about,
6 I don't know, maybe 15 hours or so. The portion related
7 to rate case expense was one of the last items. I would
8 say no more than a couple of hours.

9 Q Please turn to Page 32 of Exhibit RCN-16. This
10 is an invoice sent to Aloha for services rendered during
11 June 2000, correct?

12 A Yes.

13 Q According to this invoice, you spent 36 hours at
14 \$160 an hour answering interrogatories and document
15 requests, is that correct?

16 A Yes.

17 Q On Page 35 of the same exhibit there is an
18 invoice to Aloha for services rendered during July 2000,
19 correct?

20 A Yes.

21 Q And according to this invoice you spent 24.5
22 hours at \$160 an hour answering interrogatories and
23 document requests, correct?

24 A That's correct. We had extensive
25 interrogatories and document requests. I believe staff

1 had four sets. I believe OPC had three. We had extensive
2 document requests. I can't tell you which one of these
3 sets of interrogatories is time referred to, but there is
4 certainly more than one, and certainly the discovery in
5 this case was very extensive.

6 Q Did Mr. Jagoudis (phonetic) spend a number of
7 time in preparing the MFRs?

8 A Yes.

9 Q Isn't it correct that Mr. Jagoudis could have
10 helped in answering the interrogatories and document
11 requests as well as you during those months?

12 A I think if you look through these invoices, he
13 did. I mean, we did assign both Mr. Jagoudis and Paul
14 Decherio (phonetic) to answer these interrogatories.

15 Q Not for these invoices that I have identified,
16 Pages 32 and 35.

17 A Could you repeat that, please?

18 Q Well, you stated that Mr. Jagoudis and Mr.
19 Decherio spent time responding to staff's request and
20 responses, but Mr. Jagoudis doesn't appear on the invoices
21 on Page 32 nor on Page 35?

22 A No, not for these two months. I think my
23 testimony was that if you look through all of these
24 invoices you will see where Mr. Jagoudis did spend quite a
25 bit of time answering interrogatories and document

1 requests.

2 Q Please turn to Page 2 of Exhibit RCN-16. And is
3 this a summary of actual and estimated accounting expense?

4 A Are we looking at Page 2 of 95 or --

5 Q Yes, sir.

6 A Okay.

7 Q And that is a summary of actual and estimated
8 accounting expense through July 2000?

9 A Yes.

10 Q Staff found two errors on this summary on
11 page -- when you look on Page 30 of the same exhibit, the
12 total fees for the month of June 2000 for where it related
13 to this docket are 9,158. But on the summary page the
14 total fees were reported as 9,928, is that correct?

15 A What is the page reference for --

16 Q Page 30. If you will see in number two, it says
17 the work related for the rate case, and it says \$9,157.50?

18 A Yes.

19 Q But on Page 2 of the summary of actual
20 accounting expense, for June 2000 it says 9,928, is that
21 correct?

22 A Yes, sir.

23 Q So which is the correct amount?

24 A I can't tell right off. There is a \$751
25 difference, so I would recommend that you adjust that by

1 \$751.

2 Q Okay. On Page 34 of the same exhibit, the total
3 fees for the month of July 2000 for fees related to this
4 docket are \$7,085, and in Item 3B on this page, \$4,040 is
5 the sum of Accounts 197 and 220, is that correct?

6 A You will have to backup. I've got it -- what is
7 the page reference again?

8 Q Page 34.

9 A Okay.

10 Q Item 3B says that the amount is \$4,040?

11 A Okay.

12 Q Is that the sum of the invoice on Page 35 for
13 Accounts 197 and 220?

14 A I'm sorry, I don't have a calculator. I'm
15 having to do this by hand. That is correct.

16 Q Okay. So that \$4,040 includes Account 197.
17 Looking at Item 4 on Page 34, the \$268.11 is for rate case
18 out-of-pocket expense. Does this amount also include
19 Account Number 197?

20 A No. Account 197 is simply my secretary's time
21 for typing and copying and responding to those
22 interrogatories and document requests. So I think we have
23 properly added that to work code 220. The out-of-pocket
24 expenses are shown on Page 36 of 95 and represent a
25 separate category of costs.

1 COMMISSIONER JABER: Mr. Nixon, if you or your
2 assistant handwrite or draft the responses to
3 interrogatories or production of document requests, you
4 assess a time, I mean a value to your time. Do you also
5 charge for the secretary's time to just type what you have
6 given her?

7 THE WITNESS: Yes.

8 COMMISSIONER JABER: So in that regard there is
9 duplication for responses with respect to interrogatories
10 and production of documents?

11 THE WITNESS: Well, some of the responses are in
12 the form of schedules and so forth.

13 COMMISSIONER JABER: But you would agree with me
14 that to the degree she is typing what you have given her,
15 whether it be handwritten or drafted on the computer,
16 there is duplication with respect to working on the same
17 project?

18 THE WITNESS: I don't know if duplication is the
19 right word, Commissioner. I mean, it is clerical time to
20 put into the form needed to be filed with the Commission.
21 I mean, it would be like if we didn't have any computers
22 and we are still doing things by hand, and I gave my
23 secretary a schedule to type, I would think that would be
24 a legitimate cost. It is really not a duplication, it is
25 just the time necessary to put it into final form.

1 COMMISSIONER JABER: It's not a trick question.
2 I'm just trying to understand how many people work on one
3 interrogatory response. It might be your assistant and
4 your secretary, correct?

5 THE WITNESS: Correct.

6 COMMISSIONER JABER: It might be your assistant,
7 you, and your secretary, right?

8 THE WITNESS: Yes, ma'am.

9 BY MR. FUDGE:

10 Q Mr. Nixon, Page 1 of Exhibit 16 is a summary
11 that you prepared of actual estimated rate case expense,
12 correct?

13 A Yes.

14 Q Okay. The amount of actual engineering costs
15 reflected on this schedule is from Page 38 of the same
16 exhibit, correct? I'm sorry, Mr. Nixon, I mean legal
17 costs.

18 A Yes, that's what I was going to say. Yes, those
19 are legal costs.

20 Q Okay. And according to Page 38, this is the
21 total of invoices dated November '99 through September
22 2000, is that correct?

23 A Yes.

24 Q Okay. Would you please turn to Invoice Number
25 21820, dated February 21st on Page 64?

1 A Okay. But Mr. Deterding is going to testify
2 about --

3 Q Yes, sir, I understand.

4 A -- his time.

5 Q But you can still -- see, at the bottom of that
6 invoice it says filing fee of \$4,500, is that correct?

7 A Yes.

8 Q And if you go back to Page 1 of this exhibit,
9 the actual in-house costs reflected on this schedule is
10 from Page 95, is that correct?

11 A Yes.

12 Q Okay. On Page 95, under actual costs it says
13 filing fee \$4,500?

14 A Yes.

15 Q And yet in Mr. Deterding's invoice it shows a
16 filing fee of \$4,500?

17 A To the extent it is in there twice, it should be
18 taken out. It should only be in there one time.

19 Q Is this another mistake that was made?

20 A I guess one of the millions of mistakes that I
21 make.

22 MR. FUDGE: Thank you, Mr. Deterding -- I mean,
23 Mr. Nixon.

24 COMMISSIONER JACOBS: You threw him with that
25 last one.

1 MR. FUDGE: I'm sorry, Commissioner Jacobs, I
2 forgot we had another set of questions from another staff
3 person.

4 COMMISSIONER JACOBS: Very well.

5 BY MR. FUDGE:

6 Q Mr. Nixon, now we are going to cover the
7 projection forecast that you disagree with Mr. Stallcup
8 about. On Page 37 of your rebuttal testimony, on Lines 11
9 through 21, you state that apparently Mr. Stallcup
10 concluded that the two projections in the MFRs are not
11 virtually identical because the ending forecast number of
12 ERCs at September 30th, 2000 was 454 ERCs less than the
13 10,229 predicted by an econometric model while the revised
14 projection was within 101 ERCs of his model, correct?

15 A I was trying not to get my papers all mixed up
16 here. What page are you looking at, please?

17 Q Page 37 of your rebuttal.

18 A Yes, that is what I said, what you just quoted.

19 Q On Lines 17 through 18, do you mean September
20 30th, 2001 rather than 2000?

21 A I'm not sure. I don't have his testimony with
22 me. If it is in his testimony and you say it is, I will
23 agree with that. I don't know.

24 Q You said you don't have a copy of his testimony
25 in front of you?

1 A No.

2 Q We'll get you a copy.

3 A That's correct. That should be 2001.

4 Q Would you please turn to Page 3 of Mr.

5 Stallcup's testimony. On Lines 14 through 15 is the
6 question would you please explain how you concluded that
7 the two test year ERC forecasts are not virtually
8 identical, is that correct?

9 A Yes.

10 Q Now, please turn to Page 4. The last sentence
11 on Lines 8 through 9 is therefore I conclude that the two
12 forecasts are not virtually identical, correct?

13 A Correct.

14 Q So, Mr. Nixon, wouldn't you agree that Mr.
15 Stallcup's explanation of how he determined whether the
16 two forecasts were virtually identical would be contained
17 somewhere between Page 3, Line 14 and Page 4, Line 9?

18 A I would assume so. I mean, his testimony speaks
19 for itself.

20 Q Thank you. And you have read Page 3, Line 14
21 through Page 4, Line 9?

22 A No, I haven't read it all. I think in my
23 testimony when we were on this subject last month, I said
24 I probably wouldn't understand the mathematics and
25 statistics of what Mr. Stallcup did anyway. You know, I

1 agree what you are saying is his testimony.

2 Q But nowhere in that testimony that I cited you
3 to does he conclude that the two forecasts are virtually
4 identical for the reasons you claim in your rebuttal
5 testimony on Page 37, is that correct?

6 A I'm not sure he uses the 454 anyplace in his
7 testimony. I think what I'm saying in here, though, is
8 the thrust of his argument, if I understand it, is
9 correct. That his econometric model had an internal
10 consistency, whatever that means, that caused him to
11 believe that the revised ERC forecast in the MFRs was
12 statistically more reliable than our original forecast.
13 And I think he does someplace in his testimony mention
14 there is only a 101 ERC difference. I am not sure he
15 mentions that the original forecast was 454 less, for
16 whatever that is worth.

17 Q But nowhere in his testimony does he reach the
18 conclusion that you state that he reaches in your rebuttal
19 testimony, does he, for the reasons you set forth?

20 A Well, I don't want to sit here and read his
21 testimony because, you know, we have some time
22 constraints. I can do that. I thought someplace in his
23 testimony was the statement that his analysis compared to
24 the revised projection of ERCs in the MFR was much closer
25 than our original projection. And, therefore, he believed

1 the revised projection was a better one to use. I believe
2 that is all I'm saying.

3 Q That may have been a result of his analysis, Mr.
4 Nixon. Was that the rationale for reaching his conclusion
5 that they are not virtually identical?

6 A I believe we were looking at the wrong page. I
7 think my testimony goes to Page 6 of his testimony where
8 he cites the difference of 101. And although he doesn't
9 specifically mention the 454, he does say on the other
10 hand, the original forecast did differ significantly from
11 the econometric model's projection. So I don't think I'm
12 saying anything about his analysis that is misleading.

13 Q But you are citing to the results of his
14 analysis instead of to his actual analysis, is that
15 correct?

16 A Yes. And I think if you read my testimony on
17 this subject, mine was geared totally towards the results
18 and the uses that those results are put to in the MFRs.

19 Q So do you agree that Mr. Stallcup did not reach
20 the conclusion based on his results, but on his analysis
21 that he performed in Pages 3 through 4?

22 A If you want to phrase it that way, I would agree
23 with that. I don't have any problem with it.

24 Q Mr. Nixon, isn't it true that the Seven Springs
25 area is probably one of the fastest growing areas in Pasco

1 County?

2 A That would be my guess, yes.

3 Q Please refer back to Mr. Stallcup's testimony on
4 Page 4, on Lines 10 through 11, the question is would you
5 please explain how you concluded that the revised forecast
6 is more likely to produce reliable results, is that
7 correct?

8 A That is the question, yes.

9 Q Now turn to Page 6. The last sentence on Lines
10 22 through 25 is, these results lead me to conclude that
11 the utility's revised ERC forecast should be more
12 reflective of the conditions expected to exist in the test
13 year than in the originally filed forecast, correct?

14 A Yes.

15 Q So wouldn't you agree that Mr. Stallcup's
16 explanation of which forecast should be used would be
17 contained somewhere between Page 4, Line 10 and Page 6,
18 Line 25?

19 A I'm sorry, I feel real uncomfortable responding
20 to Mr. Stallcup's testimony. He is the one to ask about
21 what he meant or what he is doing. I don't know if it is
22 between those two pages or not.

23 Q But you are testifying as to how he reached
24 certain conclusions, and we are just asking wouldn't his
25 rationale be included in those two pages?

1 A I assume the rationale is in his schedules, in
2 his model back there. Whether he states exactly that
3 rationale between Pages 4 and 6, I don't know. On Page 5
4 he discusses the econometrics model, time trends --

5 COMMISSIONER JABER: Mr. Fudge, I'm having
6 trouble understanding the line of questioning, too. I
7 mean, Mr. Stallcup's testimony is what it is. If the
8 rationale is there, it is going to be in the record
9 already. I don't understand the line of questioning
10 either.

11 MR. FUDGE: It's just that Mr. Nixon is
12 testifying what Mr. Stallcup's rationale was when he chose
13 one model over the other.

14 COMMISSIONER JABER: Mr. Nixon, clarify for me.
15 I thought you said your testimony is based on the results?

16 THE WITNESS: Yes, ma'am. We did an original
17 projection based on ERCs, which were based on meter size,
18 which reflected actual billable customers that were active
19 connections. And in the revised schedule we started out
20 with residential ERCs, and then converted those
21 residential ERCs to total ERCs. So it is simply a
22 theoretical calculation of the ERCs.

23 And the difference between the total number of
24 ERCs projected using either approach was insignificant.
25 There was only a 34 ERC difference. And my testimony went

1 to the point that not statistically speaking, but
2 practically speaking, and for what these projections of
3 ERCs were used for, I thought the original projection was
4 just fine.

5 Now, Mr. Stallcup, if I understand his
6 testimony, went back and did an analysis to test the
7 inherent accuracy of the two forecasts. And he concluded
8 that the revised forecast was more accurate and that
9 should be used. I think that is all we are talking about
10 here is just a difference of opinion and which one of the
11 forecasts of ERCs should be used. I can't really speak to
12 his rationale or find it sitting here on the witness stand
13 in a couple of pages and say, yes, this is what his
14 rationale was or, no, that is what his rationale wasn't.

15 BY MR. FUDGE:

16 Q Mr. Nixon, since you stated earlier that you
17 have no expertise in mathematics and statistics, is it at
18 least possible that you do not understand Mr. Stallcup's
19 rationale?

20 A I think that is a fair statement, yes.

21 MR. FUDGE: All right. Mr. Fletcher is going to
22 pass out another exhibit we would like to have marked as
23 Exhibit 29. This is just for ease of reference. The
24 numbers in there are reflected in the MFRs. This is just
25 easier for him to have them available.

1 COMMISSIONER JACOBS: If that is the case, do we
2 really need to mark it?

3 MR. FUDGE: We would just mark it now for
4 identification, but we won't have to move it in. Or we
5 just don't have to mark it.

6 COMMISSIONER JACOBS: You don't need to mark it,
7 if you're not going to move it in. You can refer to it,
8 fine.

9 MR. FUDGE: Okay.

10 BY MR. FUDGE:

11 Q Mr. Nixon, you stated on Page 37, Line 24
12 through Page 38, Line 3 that what is important is the
13 projected increase in ERCs from the end of the historic
14 test year to the end of the projected test year. These
15 projected additional ERCs are those which will generate
16 additional projected revenues and expenses, correct?

17 A Correct.

18 Q Do you have a copy of the MFRs in front of you?

19 A Yes.

20 Q Will you please refer to Page 131. The third
21 column of Page 131 is entitled ERC times 1,000. Please go
22 down that column until you find the value that corresponds
23 to 1999. That number is 9,646, correct?

24 A Correct.

25 Q And 9,646 represents the number of ERCs at the

1 end of the historical test year in this forecast, correct?

2 A Yes, using the methodology I described a few
3 minutes ago. Simply a calculated number of ERCs, and in
4 no way relates to the number of billing units.

5 Q Okay. And continuing down the same column, the
6 ERC value that corresponds to 2001 is 10,330, correct?

7 A Correct.

8 Q And 10,330 ERCs represents the number of ERCs
9 projected at the end of the September 30th, 2001 projected
10 test period, correct?

11 A Correct.

12 Q And according to your testimony it is the
13 increase between those two ERC values from 1999 to 2001
14 that is important, because the additional ERCs from 1999
15 to 2001 are those which will generate additional revenues
16 and expenses, correct?

17 A Correct. And as I said, if you do the same
18 thing with the ERCs, there are different numbers. But the
19 ERCs on Page 133 for that two-year period total 718 versus
20 the 684 shown on Page 131. There is a 34 ERC difference.

21 Q Okay. Would you please look at the document we
22 have passed out entitled ERC proof of the revised
23 forecast. The first line of the exhibit is labelled base
24 year 1999 ERCs, and the number is 9,646, correct?

25 A Right.

1 Q And that is the same number we looked at
2 earlier, correct?

3 A Correct.

4 Q The third line of the exhibit represents
5 projected 2001 test year ERCs, correct?

6 A Correct.

7 Q So the first few lines of this exhibit contain
8 the information which you stated starting from the bottom
9 of Page 37 to the top of Page 38 in your testimony is
10 important, correct?

11 A Yes. Only this is the --

12 Q The revised forecast.

13 A -- revised forecast.

14 Q And, Mr. Nixon, would you multiply 9,646 by the
15 projection factor shown of 1.07093, and show that it
16 yields a result of 10,330?

17 A It does, but I think we went over this at the
18 last hearing, and I said one of my disagreements, and in
19 my understanding the 1.07093 only measures the change,
20 percentage change between the base year of 1999 and 2001.
21 So you have effectively dropped off the impact of the five
22 year historic average in this calculation. And
23 Mr. Jagoudis in my office, who is a better statistician
24 than I am, and I think even Mr. Porter says that when you
25 do that you change the slope of the five year regression

1 line. So, mathematically what I just multiplied out
2 agrees with your number, but I still don't agree it is
3 correct.

4 Q That is for a two-year growth period, correct,
5 the 1.07093 number?

6 A Yes, sir.

7 Q Now, if you used a projection factor other than
8 1.07093, you would not have arrived at the resulting ERCs
9 of 10,330, correct?

10 A Well, you wouldn't in this calculation. But I
11 don't think 1.07093 multiplied by the 1994 number of ERCs
12 to get that five-year regression line trend is the right
13 number, either.

14 The 7.093 is simply the computed percentage to
15 get from 9,646 to 10,330. So it is not really a five-year
16 average growth rate percentage based on the total
17 five-year regression line.

18 Q But isn't that factor derived from the five-year
19 regression line?

20 A The 9,646 -- excuse me, the 10,330 is. But when
21 you compute the percentage increase only using 1999 to
22 2001 you are changing the five-year percentage, you are
23 changing the slope of that regression line.

24 Q If you go down to the bottom part of the
25 exhibit, and if you multiplied the one year projection

1 factor of 1.03486 times 9,646, you would get 9,982, is
2 that correct?

3 A Say that again, please.

4 Q If you start with the base historic year of
5 9,646 and you multiply it by the growth factor of 1.03486,
6 you would get 9,982, is that correct?

7 A I assume so.

8 Q If you multiplied 9,982, again, by that same
9 growth factor of 1.03486, you would get 10,330, is that
10 correct?

11 A I think that is correct.

12 Q So, again, the calculation you just performed
13 started and ended with the information you stated starting
14 from the bottom of Page 37 to the top of Page 38 in your
15 testimony is important, yes?

16 A Sure it's important, it just depends on how you
17 get your data to apply.

18 Q And the resulting total increase in ERCs is,
19 once again, 684?

20 A Yes.

21 Q Based on the results of these calculations,
22 would you now agree that the growth factor of 1.03486
23 yields the annual or one-year growth in ERCs?

24 A It does based on your methodology of lopping off
25 the previous five years. What you have just said is the

1 percentage increase to get from 1999 to 2000 using the
2 ERCs in Column 3.

3 Q Mr. Nixon, is the utility bound by either
4 Chapter 367 or the corresponding rules in Chapter 25-30 of
5 the Florida Administrative Code to file only the
6 information requested in the MFR package?

7 A Is the utility bound?

8 Q Yes. Can you file more information than is
9 required?

10 A You can, sure.

11 Q So isn't it the utility's burden to file
12 whatever additional information it believes is necessary
13 to meet its burden of proof with respect to its requested
14 rate increase?

15 A We usually try to file as much information as
16 necessary to support the increase.

17 Q And the statute nor the rule do not require that
18 all possible variations of methodologies be examined by
19 the utility prior to its filing, does it?

20 A Well, I think we complied with the rule in
21 presenting the information we did. There are certainly
22 other methodologies out there. Based on my experience, I
23 didn't feel the need to utilize anything different than
24 the information required on Schedule F-10. We didn't have
25 any unusual circumstances that I felt would warrant a

1 deviation. We have had fairly stable growth out there.
2 We have had no real huge fluctuations for unusual reasons.
3 So I believe the information on Schedule F-10 was
4 appropriate as presented.

5 Q So would you agree that staff's role is to
6 evaluate the utility's filing to make a recommendation as
7 to whether the utility had met its burden of proof with
8 respect to the requested rate increase?

9 A Yes, that is the Commission's purpose.

10 Q Okay. On Page 7 of your deposition, which is
11 Exhibit 6, you said that you don't understand the
12 significance of a slope in a linear regression equation.
13 Is that still true?

14 A Pretty much, yes.

15 Q In fact, you responded all I know how to do is
16 plug the data into a linear regression formula in the
17 computer and get a result. Is that statement still true?

18 A Yes.

19 MR. FUDGE: Thank you, Mr. Nixon.

20 COMMISSIONER JACOBS: Very well. We will break
21 for lunch. We will come back at 1:30. Let me advise the
22 parties I anticipate that we will go tonight until we
23 finish, particularly since the time line on this case is
24 being pressed. And I wouldn't anticipate us going too
25 late this evening, either. But maybe you guys can get

1 together over lunch and figure out about how much time we
2 are looking at to complete. Thank you. We will be back
3 at 1:30.

4 (Lunch recess.)

5 COMMISSIONER JACOBS: We will go back on the
6 record. I assume we have circled wagons. What does it
7 look like in terms of finishing -- well, we have to finish
8 today, so what does it look like in terms of our process?

9 MR. FUDGE: We don't have that many questions
10 for the remaining witnesses.

11 MR. WHARTON: Some people felt like that was the
12 witness, that was the long witness.

13 COMMISSIONER JACOBS: Is that right? Sounds
14 good. I guess you carry the honor with you, Mr. Nixon.

15 Very well. You were finished, complete, right?

16 MR. FUDGE: Yes, Commissioner.

17 COMMISSIONER JACOBS: Redirect.

18 MR. DETERDING: Thank you, just a few.

19 REDIRECT EXAMINATION

20 BY MR. DETERDING:

21 Q Mr. Nixon, Mr. Fudge referred you to Page 13,
22 Line 15 of your testimony, some testimony you were giving
23 concerning the new controller.

24 A Yes.

25 Q And your testimony there says, based -- let me

1 paraphrase this, and see if I've got it right. That based
2 upon the experience and background of the new controller
3 versus the old controller, you would logically conclude
4 that the CPA firm would have to assist more with the new
5 controller, is that right?

6 A That's right.

7 Q Now, Mr. Fudge was asking you about whether or
8 not that was a long-term effect because of the learning
9 curve as this person is there awhile. What I'm trying to
10 understand is, he said wouldn't that decrease over time.
11 But once it decreased, once this person got to be very
12 experienced, would you expect there to be a greater amount
13 of time than the previous controller, or a similar amount,
14 or less necessary from outside help?

15 A I think I tried to get at that in my answer to
16 Mr. Fudge's question. I said once the new controller
17 learns her position, I would think our involvement would
18 continue to be about what it has been with the old
19 controller. She was very experienced, yet sought our
20 advice and input and so forth. So I don't think anything
21 is going to change over the long run.

22 Q But in the short-term I think what your
23 statement here suggests is in the short-term it will be
24 greater, but in the long-term it will be about the same.

25 A That's correct.

1 Q Okay. I just wanted to clarify that. You were
2 referred to RCN-17, which I believe is an excerpt from the
3 MFRs as filed originally?

4 A Yes.

5 Q Mr. Fudge was asking you some questions about
6 the wording, I guess, on Lines 14 through 18, and the
7 confusion -- apparently, the confusion between what the
8 statement in the third full sentence, I guess, or the
9 second full sentence, the company has received matching
10 funds referred to. Was the Little Road line relocation
11 related to a reuse line?

12 A No.

13 Q Was the Little Road project the subject of its
14 own proceeding before this Commission that concluded last
15 fall?

16 A Yes.

17 Q Was the issue of the appropriateness of that
18 line relocation investigated by the PSC staff and
19 auditors?

20 A Yes, it was.

21 Q As to the matching funds, were those discussed
22 in the reuse case completed a couple of years ago?

23 A They were to the extent that the Commission
24 ordered Aloha to go to the Southwest Florida Water
25 Management District and inquire about and apply for

1 funding.

2 Q For reuse lines, correct?

3 A For reuse lines.

4 Q And that was in the reuse case that they made
5 such a requirement?

6 A Yes.

7 Q Mr. Fudge pointed you to several items within
8 your bills that apparently the staff believes are errors
9 within those bills, and one in one of my bills that
10 apparently is a duplication. If you add up all of the
11 alleged errors in those bills, are they material to the
12 total amount of rate case expense?

13 A No.

14 Q Are they material to the rate increase
15 requested?

16 A No.

17 Q Concerning the projections of your response to
18 Mr. Stallcup, was your methodology -- have you used your
19 methodology and your way of calculating and utilizing the
20 regression, simple regression used by you in any previous
21 cases?

22 A Yes, but I can't recall which ones.

23 Q Have you done this the same way in your Schedule
24 F-10 in other cases?

25 A Yes, we have, as far as the ERCs as I defined

1 them earlier based on meter equivalents.

2 Q Has it been adjusted by the staff in those
3 cases, by the Commission?

4 A No.

5 Q If the Commission staff had called you and said
6 we found this filing fee to appear both in the in-house
7 costs and in the legal bills, what do you think your
8 reaction or the utility's reaction would have been?

9 A I think we would have just agreed to make an
10 adjustment and stipulate it out of the case.

11 MR. DETERDING: That's all I have.

12 COMMISSIONER JACOBS: Exhibits.

13 MR. DETERDING: I want to move 22 and 23.

14 MR. BURGESS: Commissioner, I object to Exhibit
15 22. This is the exhibit that showed the difference in the
16 expenditures in 1999 versus 1998 for materials and
17 supplies.

18 COMMISSIONER JACOBS: I believe that may be 23.

19 MR. BURGESS: That's right. That was the one
20 that I had to change. It's 23 that I object to; 22 I have
21 no objection to.

22 COMMISSIONER JACOBS: Okay. We will show 22 as
23 admitted. Let's hold off on 23 for a moment.

24 MR. FUDGE: Staff moves 24 through 28.

25 COMMISSIONER JACOBS: Without objection show

1 24 --

2 MR. FUDGE: I'm sorry, 24 through 27; 28 is a
3 late-filed exhibit.

4 COMMISSIONER JACOBS: Twenty-four through 27
5 admitted.

6 (Exhibit 23 and 24 through 27 admitted.)

7 COMMISSIONER JACOBS: Your objection, Mr.
8 Burgess.

9 MR. BURGESS: Yes, sir. This is in response --
10 in Mr. Nixon's rebuttal testimony in response to an issue
11 raised by Mr. Larkin. Mr. Larkin's concern was that in
12 this particular account it looked like 1999 was an
13 unusually high year, that it was above the norm. That was
14 the issue as raised. And as Mr. Nixon has pointed out,
15 1999 actual is what was used to project that which will
16 drive the rates on a going-forward and repetitive basis
17 from here on, and so it needs to be very careful that
18 there not be a spike or a non-representative year.

19 This exhibit simply shows the amount that is
20 spent in the two different years. And it shows, without
21 the adjustments, that in 1999 it was 62,876 and in 1998 it
22 was 36,000 and something. This simply breaks it down.
23 And if you look at it, I mean, it shows that there are
24 differences, but it doesn't explain anything. And that
25 was the whole point of the issue as raised by Mr. Larkin.

1 If you cannot explain why these are going to
2 continue at this higher level for 1999, then it needs to
3 be adjusted so that it doesn't reflect future rates that
4 go on, and on, and on when, in fact, it is a spike. And
5 just take a sampling of these, take it in the middle.
6 Electric and mechanical, 5,800 in 1999; 400 in 1998.
7 Granger, 9,000 in 1999; 4,000 in 1998. Graybar Electric,
8 2,100 in 1000; 0 in 1998. And on and on it goes.

9 Now, this says this is where the money is spent.
10 Well, we knew the money was spent, that's not the question.
11 But this doesn't explain anywhere or go at all to the issue
12 of demonstrating that these are on-going expenditures and
13 that is our concern.

14 COMMISSIONER JACOBS: So your objection is based
15 on relevancy.

16 MR. DETERDING: On relevancy. It does not
17 address the issue that was raised by Mr. Larkin.

18 COMMISSIONER JACOBS: Okay. Mr. Deterding.

19 MR. DETERDING: Well, the purpose as Mr. Nixon
20 said when he sponsored this, this is simply -- does not
21 change his testimony, but simply is an illustration of
22 what was composed of the 1999 -- in the 1999 expenses as
23 compared to 1998. To the extent that Mr. Burgess believes
24 that this does not demonstrate the appropriateness of
25 those costs, then he certainly can take that position in

1 his briefs. But I don't see any reason to exclude it
2 based upon that reasoning. It certainly in Mr. Nixon's
3 mind is relevant to the issue at hand, which is whether or
4 not the expenses for 1999 base year or the first nine
5 months of '99 are appropriate. So I don't think that is a
6 basis for excluding it. It may be a basis for claiming
7 that it doesn't -- in his argument doesn't demonstrate the
8 appropriateness of Mr. Nixon's position.

9 MR. BURGESS: Commissioner, I don't object to it
10 that much. I mean, it is information as to what the money
11 was spent on. I just want to make the point that it
12 really does not address the issue that was raised. And
13 with that, I withdraw my objection to it going in.

14 COMMISSIONER JACOBS: Very well. We will
15 proceed. It will be given the weight it would be due.

16 MR. DETERDING: Thank you.

17 COMMISSIONER JACOBS: Thank you for expediting
18 that for us. And with that we admit Exhibit 23. Very
19 well. Next witness.

20 (Exhibit 23 admitted into the record.)

21 MR. WHARTON: Aloha would call David Porter.

22 - - - - -

23 DAVID W. PORTER

24 was called as a witness on behalf of Aloha Utilities, Inc,
25 and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. WHARTON:

Q Mr. Porter, have you previously been sworn in this proceeding?

A Yes, I have.

Q Please state your name and employment address for the record.

A My name is David W. Porter, PE. The address is 3197 Ryans, R-Y-A-N-S, Court, Green Cove Springs, Florida 32043.

Q And are you the same David W. Porter who provided direct testimony in this proceeding?

A I am.

Q Sir, did you cause to be prepared a document referred to as the rebuttal testimony of David W. Porter?

A I did.

Q Consisting of 25 pages?

A That is correct.

Q If I asked you those same questions here today, would your answers be the same?

A They would.

Q Do you have any corrections to make to that testimony at this time?

A Yes, I have several small typos. On Page 1, Line 24, strike the third word "the". So it should read

1 upgrades to occur in the test year, instead of upgrades to
2 the occur.

3 On Page 2, Line 17, first word, change "used" to
4 "use".

5 Page 3, Line 1, the word "hundreds" should be
6 "thousands".

7 And I believe one more, Line 5 -- I'm sorry,
8 Page 5, Line 22, change the fifth word from "t" to "to".
9 So it should read would only be made to the marginal
10 costs. And those are the changes that I have.

11 Q Did you also prepare certain exhibits which were
12 prefiled as DWP-1?

13 A I did.

14 Q And those were exhibits documenting engineering
15 costs in this proceeding?

16 A That's correct.

17 Q Let me ask you, Mr. Porter, did you also provide
18 information to Mr. Nixon which he used in part to put
19 together the exhibit that he talked about during his
20 testimony, which was the updated rate case exhibit?

21 A Yes, I did. Those were the updates, that's
22 correct.

23 Q Do you have any corrections to make to your
24 exhibit?

25 A No.

1 MR. WHARTON: We would request that Mr. Porter's
2 prefiled rebuttal testimony be inserted in the record as
3 though read and that his attached prefiled exhibit be
4 marked for identification.

5 COMMISSIONER JACOBS: Without objection, show
6 his rebuttal testimony entered into the record as though
7 read. We will mark Exhibit DWP-1 rebuttal as Exhibit 29.
8 Did you ask for it to be admitted, also? 30? Did I miss
9 one? I'm up to 29.

10 MR. JAEGER: Twenty-nine is correct. We had
11 another one that we were getting ready to mark, and we
12 didn't even identify it as an exhibit.

13 (Exhibit 29 marked for identification.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ALOHA UTILITIES, INC.

DOCKET NO. 991643-SU

REBUTTAL TESTIMONY OF DAVID W. PORTER, P.E., C.O.

1 Q. Please state your name and professional address.

2 A. David W. Porter, P.E., C.O., Water/Wastewater System
3 Consulting Engineer, 3197 Ryans Court, Green Cove Springs,
4 Florida, 32043

5 Q. Have you previously provided testimony in this proceeding?

6 A. Yes, I prefiled direct testimony.

7 Q. What is the purpose of this rebuttal testimony?

8 A. I wish to respond to a number of statements made, and
9 issues raised, by Mr. Ted L. Bidy, P.E. in his prefiled
10 direct testimony.

11 Q. Have you read the prefiled direct testimony of Mr. Ted L.
12 Bidy, P.E. which he prefiled in this proceeding?

13 A. Yes.

14 Q. Do you agree with Mr. Bidy's methodology that he developed
15 to assess the used and useful percentage for the Seven
16 Springs Wastewater Collection and Transmission System?

17 A. No.

18 Q. Please state why you do not agree.

19 A. First, with the exception of required line relocations and
20 upgrades to ~~the~~ occur in the test year, the vast majority of
21 the collection system is 100% contributed and therefore, is

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FPSC-RECORDS/REPORTING

1 100% used and useful. Therefore, no used and useful
2 adjustment is appropriate under any scenario. Mr. Nixon has
3 discussed this aspect of the issue in his rebuttal
4 testimony. Mr. Bidy based his used and useful determination
5 on a factor derived by calculating the ratio of residential
6 lots presently occupied in the entire service area and the
7 total number of residential lots available for development.
8 It appears that Mr. Bidy believes that the collection
9 system lines and wastewater pumping stations are not 100%
10 used and useful if there were still undeveloped lots to be
11 connected in the future in the area served by the facilities
12 in question. This used and useful determination methodology
13 is totally incorrect as it assumes that one can technically
14 and cost effectively construct wastewater collection systems
15 in a piecemeal fashion by constructing a small sewer line to
16 accommodate the small number of initial customers that will
17 use the water and wastewater facilities and then, as more
18 customers are added to the system, add a parallel sewer line
19 to carry the increased flow. This method of constructing
20 sewer lines and wastewater pump stations could not be
21 accomplished in compliance with Florida Department of
22 Environmental Protection (FDEP) rules. FDEP rules prohibit
23 the construction of sewer lines smaller than eight inches in
24 diameter for wastewater collection systems. An eight inch
25 sewer line can carry the wastewater generated by many

THOUSANDS

1 ~~hundreds~~ of customers. The majority of Aloha's sewer lines
2 are eight inch diameter (the minimum size allowable by FDEP
3 rule) and could not have been constructed any smaller. Even
4 if the FDEP did not specify a minimum line size, it would
5 not be cost effective to install line sizes below the size
6 needed to serve the entire number of customers that may be
7 served in the subject area during the expected life of the
8 sewer itself. This is because the cost of increasing the
9 size of a new sewer line from one size to the next larger
10 size (say from eight inch diameter to 10 inch diameter) is
11 very small, approximately \$1.05, for materials. However, the
12 wastewater flow capacity of the 10 inch diameter sewer, laid
13 at minimum slope, is 1.8 times greater. The eight inch
14 diameter PVC line laid at minimum slope could carry
15 approximately 475,000 gallons of wastewater per day. The 10
16 inch diameter PVC line laid at minimum slope could carry
17 approximately 864,000 gallons of wastewater per day. At 150
18 gallons per day per connection this means that the eight
19 inch diameter line could carry the wastewater from 3,166
20 customers each day and the 10 inch diameter line could carry
21 the wastewater from 5,760 customers each day. The cost to
22 increase the size of the pipeline from 8 inch diameter to 10
23 inch diameter would not be materially different,
24 approximately \$1.00 to \$1.50 per foot of length as the only
25 real cost difference is in the cost of the materials as the

1 construction cost of installing an eight inch line is
2 essentially the same as for a 10 inch line. If however, the
3 smaller line was originally installed as Mr. Bidy suggests,
4 and a new line must be added later to carry the sewage flow
5 from the additional 2,594 customers, the cost of adding
6 another parallel sewer line to the first line would be very
7 large, perhaps in the area of \$12.00 to \$20.00 per foot plus
8 the cost of additional manholes and appurtenances. As you
9 see, since the minimum size of a gravity sewer line is eight
10 inch diameter and since the cost of up sizing to a 10 inch
11 diameter line is inconsequential, it would be imprudent to
12 attempt to build sewer lines for anything less than the
13 total expected number of customers in any given part of the
14 service area. The marginal cost of increasing the size of
15 the pipeline initially is so small as compared to the total
16 cost of installing the sewer line that it becomes
17 inconsequential. Even if a used and useful adjustment were
18 to be made for the collection system, it should be made on
19 the marginal cost of supplying larger sized piping material
20 only as the construction related costs are not affected. The
21 same situation exists for wastewater pumping stations, the
22 major costs associated with constructing a wastewater
23 pumping station is the cost of the property it resides on,
24 the cost of the concrete pump station wet well, and the cost
25 of the piping and controls. Although the pumps are costly,

1 the cost of increasing the pumping capacity of a pump from
2 one size to the next is very small, on the order of 10 to
3 15% in many cases. Here I am specifically talking about the
4 cost of the pumps alone; the cost of the remaining pump
5 station components would not vary appreciably with a one
6 size upsizing of the pumps. However, retrofitting a pump
7 station to accept larger pumps in the future is very costly
8 as modifications to the structure are frequently needed as
9 well as to the piping, controls and appurtenances. In
10 addition, the labor involved in retrofitting a pump station
11 with new pumps can be quite high. One would also lose the
12 value of the pumps first installed before the end of their
13 service life. Construction related costs, that would be
14 duplicated in future upgrades (such as site dewatering;
15 concrete wet-well framing and forming; force main
16 installation; and control system installation) far outweigh
17 the costs associated with upsizing the pumps initially. For
18 these reasons, the methodology Mr. Bidy developed to assess
19 the used and useful percentage for the Seven Springs
20 Wastewater Collection System is not correct. Even if a used
21 and useful adjustment was appropriate (which it is not), it
22 would only be made ^{T_D} the marginal cost of the larger pipe
23 (for lines) and the marginal cost of the pumps themselves
24 (for pump stations) which are both wholly immaterial to the
25 total cost. This system is 100% used and useful.

- 1 Q. Do you agree with Mr. Biddy's statement that the Seven
2 Springs Wastewater Collection and Transmission System is not
3 100% used and useful?
- 4 A. No, for the reasons that I have stated above.
- 5 Q. What used and useful percentage would you apply to the
6 Seven Springs Wastewater Collection System?
- 7 A. 100% for the reasons stated above.
- 8 Q. Mr. Biddy testifies that "the familiar FDEP rule of 200 GPD
9 per inch of pipe diameter per mile of sewer line" should be
10 the benchmark used when the Seven Springs Wastewater
11 Collection System (SSWCS) is evaluated for the presence of
12 excessive I/I. Do you agree?
- 13 A. No. The benchmark that Mr. Biddy applies, 200 gal/inch
14 diameter/mile, is quoted in FDEP rules that deal with
15 determining if a newly constructed sewer line has been
16 constructed properly. It is a calculation that the engineer
17 of record must perform prior to certifying that the sewer
18 line is "substantially complete" and ready for FDEP approval
19 to put it into service. The 200 gallons/inch diameter/mile
20 figure that Mr. Biddy quotes is an engineering standard used
21 to determine the integrity of newly constructed PVC lines
22 with high reliability gasket systems before the first
23 customer connection to the new sewer is made. Once the line
24 is put into service and customer connections are made, the
25 line will no longer exhibit the 200 gallon/inch

1 diameter/mile water infiltration and inflow rate. Nowhere in
2 FDEP rules is there any reference to this number being
3 applied to any existing system to determine if excessive I/I
4 is occurring. In fact, there are a number of locations in
5 the FDEP rules that require utility systems to determine if
6 their system is experiencing excessive I/I. FDEP Rule 62-
7 600.735 F.A.C. specifically states that "The collection
8 system shall not be evaluated unless treatment plant
9 problems result from the operation of collection and
10 transmission facilities (such as excessive
11 infiltration/inflow, septic wastewater, introduction of
12 toxic substances, or lack of controls on industrial
13 wastewater discharges to the collection system)." Aloha
14 submitted just such an Operation and Maintenance Performance
15 Report to FDEP in December 1997 as part of a wastewater
16 permit application package. In that report, Aloha's
17 engineer's did not evaluate the collection system because,
18 in Aloha's opinion and that of their consulting engineer,
19 excessive I/I was not present in the SSWCS. FDEP reviewed
20 and approved the report and issued the permit. Therefore,
21 assuming FDEP was not negligent in their review of the O&M
22 Performance Report, FDEP agreed that the SSWCS was not
23 experiencing excessive I/I. In addition, on March 1, 2000
24 Aloha submitted a required Capacity Analysis Report to the
25 FDEP for the wastewater treatment plant. In this report,

1 Aloha's consulting engineer did not address I/I again
2 because Aloha and its consultant both believe that excessive
3 I/I do not exist in the SSWCS. The FDEP also approved this
4 report. Again, assuming that the FDEP reviewers were
5 diligent in their duty, the FDEP also agreed that there were
6 no excessive I/I problems with the SSWCS. Contrary to what
7 Mr. Biddy stated in his prefiled testimony, Aloha's SSWCS is
8 not mainly constructed of PVC pipe with gaskets. A
9 substantial portion of the sewer lines that make up the
10 system are constructed of clay tile pipe. Also, much of the
11 PVC pipe that was constructed over 15 years ago (before the
12 newer, more reliable, PVC pipe and gasket materials that are
13 used today were developed) are prone to higher leakage
14 rates. The clay tile pipe, of the age found in Aloha's
15 system, is easily cracked and broken and often develops
16 leaks as it ages. Standard sewer system evaluation and
17 design manuals (from the USEPA and professional trade groups
18 such as the Water Environment Federation, etc.) provide a
19 wide range of allowable expected I/I values based on pipe
20 type, age and depth of bury of the pipe. Nowhere in any
21 manual of this type is it stated that one should apply a 200
22 gallon per day per inch diameter per mile I/I standard to
23 clay tile pipe or PVC pipe as soon as it is put into
24 service. The 200 gallons/inch diameter/mile figure that Mr.
25 Biddy quotes is an engineering standard used to determine

1 the integrity of newly constructed PVC lines with high
2 reliability gasket systems before the first customer
3 connection to the new sewer is made. Once the line is put
4 into service and customer connections are made, the line
5 will no longer exhibit the 200 gallon/inch diameter/mile
6 water infiltration and inflow rate. Expected I/I values
7 provided in the standard manuals of practice for this
8 industry vary between 10,000 and 40,000 gallons per day per
9 mile of sewer length for the type of pipe, age and depth of
10 bury for the SSWCS. Given that there are approximately 35
11 miles of sewer pipelines in the SSWCS, then the expected I/I
12 contribution to the total wastewater flow rate would be
13 between 350,000 and 1,400,000 gallons per day. Within the
14 last 12 months, Aloha has completed a total, sub-system by
15 sub-system, flow isolation study for the SSWCS. This study
16 was undertaken to comply with the requirements of the
17 Amended and Restated Consent Final Judgement imposed by the
18 FDEP. This study, and the resultant sewer line repair work,
19 were designed to allow Aloha to swap allowable I/I flow
20 reductions for increased new customer connection capability
21 without first further expanding the wastewater treatment
22 facilities. In effect, Aloha was required by FDEP to remove
23 I/I water from the system (even though the I/I is not
24 considered excessive) in order to make room for additional
25 new home connections at the existing wastewater treatment

1 plant. This agreement with the FDEP was prudent from the
2 Utility management standpoint not only because it allowed
3 Aloha to more efficiently service new sewer customers,
4 without constructing additional treatment facilities, but
5 because I/I analysis and reduction is a normal, necessary
6 and prudent part of operating a wastewater collection
7 system, especially as that system ages. The flow isolation
8 study showed that the majority of the I/I identified system-
9 wide could be removed by concentrating on one sub-system.
10 This sub-system, serving the Seven Springs Boulevard and
11 Veterans Village area (not surprisingly) has sewer lines
12 constructed of clay tile pipe that are some of the oldest in
13 the system and are deeply buried. The remaining sub-systems
14 showed that a potential additional 30,000 gallons per day of
15 I/I could be removed, but at a higher cost as the defects
16 would be spread out over a much larger area requiring much
17 more detailed investigation to locate them. Therefore, the
18 138,000 gallons of I/I found in the Seven Springs and
19 Veterans Village area was targeted to receive detailed
20 television inspection and defect repair work first. This
21 work has been completed and Aloha has requested that the
22 FDPE issue new connection credit for the 138,000 gallon per
23 day allowable I/I removed to date. Therefore, there is now
24 approximately 30,000 gallons per day of remaining I/I that
25 has been identified in the remainder of the system. This

1 quantity of I/I is comparatively small and well below the
2 anticipated I/I flow rates expected in a system of this age
3 and type according to the standard manuals of practice for
4 this industry.

5 However, even though the 30,000 gallons of remaining I/I
6 identified is quite small, it represents defects in the
7 piping and manhole systems that must be found and corrected
8 as part of an ongoing sewer system maintenance program.

9 These defects, if not corrected, can lead to serious damage
10 to the roadways which are located over the sewer line and
11 manhole defects. Should the sewer line defect not be

12 corrected, the soil in the area surrounding the pipeline
13 defect is gradually washed into the sewer line. This causes

14 an ever expanding soil void to open up near the defect

15 location. After enough of the soil is removed and the void

16 becomes large enough so as to no longer provide the

17 necessary support for the roadway above, the roadway will

18 collapse when a large vehicle (such as a school bus or

19 truck) pass over. The collapse of a roadway causes not only

20 damage to the vehicle and its passengers, but also causes

21 massive damage to the pipeline below. The repairs needed

22 after a roadway collapse are orders of magnitude larger than

23 the cost of repairing the pipeline and manhole defects

24 before the problems expand. This is why Aloha has, as do all

25 properly managed sewer utility systems, a program to inspect

1 and repair sewer line and manhole defects on an ongoing
2 basis.

3 Another indicator that proves that the SSWCS is not
4 receiving excessive I/I flows is that the average per
5 connection flow contribution for the system is less than 150
6 gallons per connection per day. The national average for per
7 connection wastewater generation flow rates is approximately
8 250 to 300 depending on the source of the data. This would
9 indicate that Aloha's wastewater generation rate is low
10 because its I/I flow contribution is lower than average.
11 FDEP witness MacColeman also states that the FDEP finds the
12 150 gallons per day per connection "normal." For all the
13 reasons stated herein, it is my opinion that the SSWCS does
14 not exhibit excessive I/I and is therefore 100% used and
15 useful.

16 Q. Mr. Bidy estimates that there is approximately 280,000
17 gallons per day of I/I flow entering the SSWCS. Do you
18 agree?

19 A. No. Mr. Bidy states that since approximately 140,000
20 gallons per day of I/I have been found to date by Aloha, and
21 since that I/I reduction was accomplished in a small part of
22 the total system, then a proportional amount of I/I must
23 exist in the remainder of the system. This totally ignores
24 the fact that the reason that the approximate 140,000 gallon
25 I/I reduction took place in the small sub-system is that

1 this is the sub-system that one would expect to find higher
2 I/I rates in. This part of the system was one of the first
3 areas to be added to the SSWCS and its sewers are
4 constructed of clay tile pipe buried deeply under heavily
5 traveled highways. Also, Mr. Biddy's statements totally
6 ignore the fact that total system I/I estimates based on
7 total system flow isolation studies show that a maximum of
8 approximately 30,000 gallons per day of I/I may exist in the
9 remainder of the system. Also, Mr. Biddy fails to note that
10 the 140,000 I/I flow identified has been removed from the
11 system and no longer exists. As the I/I flows have been
12 reduced over the last year, the flow of wastewater to the
13 system from new connections (and from areas with higher
14 sewer use customers) has increased making the reduction in
15 I/I less apparent. However, it must be kept in mind that had
16 the allowable I/I reductions not been realized, the actual
17 wastewater plant flows would be higher than now being
18 experienced or projected for the test year. Mr. Biddy states
19 that the Capacity Analysis report prepared by me in March of
20 this year indicated excess I/I in the collection system.
21 This is not correct. I state that in 1998, regional flooding
22 occurred in much of Florida that caused flood water inflow
23 into the sewer lines. This problem occurred all over Florida
24 and was not related to the condition of Aloha's sewer lines
25 but to street and surrounding land area flooding causing

1 water to flow into the tops of manholes and pump station
2 entrance hatches. In my Capacity Analysis Report I reported
3 that these flows were not characteristic of the SSWCS and
4 that they should be removed from the analysis for system
5 capacity as they were flood related. The FDEP agreed and
6 system flow projections were based on "normalized" 1998
7 flows and not the flows that were flood water induced inflow
8 based. This fact is clearly described in the Capacity
9 Analysis Report and I have no idea why Mr. Bidy would state
10 that my report indicated that excessive I/I was present. The
11 actual estimated quantity of I/I remaining in the SSWCS at
12 this time is 30,000 gallons per day which is far below
13 expected normal I/I values for the type, age and depth of
14 bury of the pipe located throughout the service area.

15 Q. Mr. Bidy states that the operating expenses for the
16 wastewater treatment plant should be adjusted for the
17 presence of excessive I/I. Do you agree.

18 A. No. Since no excessive I/I exists there is no basis for
19 adjusting operating expenses. In addition, Mr. Bidy states
20 that he believes that the maintenance budget amount is
21 excessive as the equipment manufacturer's of the new
22 equipment must warrantee their equipment for one year after
23 startup. Manufacturer's warrantees apply only to the repair
24 of defects in materials and workmanship, they do not apply
25 to normal operations, preventative maintenance, the purchase

1 of necessary spare parts, equipment repair due to normal
2 operation, updates to the process computer controller
3 programming, electronic control equipment service contracts,
4 master computer system software upgrades, replacement of
5 controls and equipment damaged by lightning, electric
6 generator diesel motor maintenance, electric generator power
7 system maintenance contracts, etc. This system must be 100%
8 reliable as required by FDEP Rule 62-610 and therefore,
9 requires a great deal of preventative maintenance to
10 maintain that 100% reliability. The cost estimate for
11 maintenance is appropriate; none of these costs will be
12 diminished by manufacturer's warrantee provisions.

13 Q. Mr. Biddy also states that the used and useful percentage
14 for the wastewater treatment plant should be reduced based
15 on excess I/I being present in the system. Do you agree?

16 A. No. First of all, all the process units and equipment
17 associated with this project are part of the reuse system so
18 each and every component is 100% used and useful, secondly,
19 no excessive I/I is present, therefore, any proposed
20 reduction in used and useful percentage based on the
21 assumption that excessive I/I is present is incorrect.
22 Thirdly, each and every process unit provided at the
23 wastewater treatment plant is sized to provide Class-One
24 Reliability as required by FDEP rules for systems providing
25 Part III reuse water (unrestricted access) to customers. Mr.

1 Bidly specifically states that two new plant components, the
2 headworks and the equalization tank, were sized to
3 accommodate the anticipated build-out flow rate of 2.4 MGD.
4 While these units can and will be used throughout the useful
5 life of the facility, they were designed as part of this
6 interim upgrade with Class-One Reliability features as
7 required by FDEP rule. In addition, all of the interim
8 modifications, from the master wastewater pumping station to
9 the headworks, to the flow equalization system, to the
10 intermediate pumping system upgrade, to the new reuse
11 pumping station to the plant water system to the electric
12 generator system were required to provide FDEP with
13 "reasonable assurance" that the wastewater plant would
14 produce Part III reuse water. I am not an attorney, however,
15 I have read the PSC and FDEP Rules and they state that reuse
16 projects are to be deemed 100% used and useful. The FDEP
17 required all the interim modifications prior to allowing
18 Aloha to begin selling Part III reuse water to customers.
19 Therefore, all the interim upgrades should be found to be
20 100% used and useful as they are an integral and required
21 part of the reuse system. Mr. Bidly also states that two
22 existing components, the reuse chlorine contact chamber and
23 the effluent filter, have been sized for the ultimate flow
24 rate of 2.4 MGD. This statement is also not correct, the
25 filter is not sized for the ultimate capacity and has never

1 been permitted by FDEP as such. In fact, the permit
2 application documents for the interim upgrades state that a
3 filter upgrade will be required when the next facility
4 upgrade is permitted. The chlorine contact chamber is sized
5 to provide the proper CT (concentration and time) values
6 with Class-One Reliability allowances, for the 1.6 MGD
7 interim flow rate. The chlorine contact chamber may be
8 capable of properly disinfecting a higher flow rate after
9 the filter system is upgraded as the influent fecal coliform
10 levels may be reduced allowing a lower CT value to be
11 utilized in the future. This will allow the same tank to
12 treat additional flows. However, it must be noted that a new
13 filter backwash water supply tank may be necessary if the
14 existing chlorine contact tank is used to disinfect higher
15 flow rate in the future as the chlorine contact tank now is
16 used for dual purposes. The backwash water holding capacity
17 of the existing chlorine contract tank will be needed to
18 provide CT value. A number of the process units, such as the
19 headworks are constructed of concrete. Because of land
20 availability, economy of scale and future operational
21 considerations, the large concrete structures must be
22 designed to accommodate the full anticipated flow rate of
23 the facility. The plant site is much to small to accommodate
24 two headworks structures, one large one constructed now and
25 a smaller one added to handle the future flows later. In

1 addition, the total cost of constructing two headworks
2 structures would be at least twice as expensive as building
3 one unit to handle the anticipated build out flows now.
4 Also, the cost of providing flow splitting facilities to
5 provide flow, in the proper ratios, to each unit would be
6 excessive and complicated to operate. This type of system
7 would be inherently less reliable as well requiring
8 additional reliability features be built into the system to
9 provide FDEP with "reasonable assurance" that the system
10 will function 100% of the time. The flow equalization system
11 constructed as part of the interim modifications were sized
12 to provide high level equalization for 1.6 MGD average daily
13 flow rate plus back-up units as required to meet FDEP Class-
14 One Reliability required for Part III wastewater reuse
15 systems. High level equalization (peak flow rate emanating
16 from the equalization system of 1.3:1 or less) is required
17 at this time due to the limited size of the existing
18 activated sludge reactors and clarifiers if FDEP Class-One
19 Reliability is to be met. In the future, when new larger
20 activated sludge reactors and clarifiers are added to the
21 facility that are sized to meet the FDEP Class-One
22 Reliability requirement without high-level equalization,
23 this same system will provide that lessor level of
24 equalization for a higher flow rate.

1 Q. Mr. Bidy states that he believes that a used and
2 useful adjustment should be made to the reuse system. Do you
3 agree.

4 A. No. Mr. Bidy again bases his need for an adjustment on his
5 belief that there are excessive I/I flows being experienced
6 in the SSWCS. This is a false assumption for the reasons I
7 outlined previously. In addition, Mr. Bidy states that he
8 believes that the reuse system can provide reuse water for a
9 2.5 MGD future flow rate. Mr. Bidy has based his
10 assumptions on influent average daily flow of the wastewater
11 into the treatment plant. However, reuse systems are
12 designed based on reuse water demand, much like potable
13 water systems. The influent flow rate to the wastewater
14 plant has little to do with the design of the reuse system
15 components. This is because reuse systems see a highly
16 variable demand for reuse water. The demand is based on many
17 factors such as the season of the year, the types of uses
18 the reuse water is provided for, any local regulatory
19 imposed lawn watering restrictions (limiting number of times
20 lawns can be watered each week), the lack or abundance of
21 rainfall, etc. Therefore, a reuse system must be designed
22 for the maximum demand anticipated while still maintaining
23 system pressures at useable levels. Since the purpose of a
24 reuse system is irrigation and not potable supply, the
25 pressure reserve of the system must be much greater than a

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22 for the maximum demand anticipated while still maintaining
23 system pressures at useable levels. Since the purpose of a
24 reuse system is irrigation and not potable supply, the
25 pressure reserve of the system must be much greater than a

1 potable water system to insure that sufficient pressure will
2 be available for the utilization of yard sprinklers. In
3 potable water systems, minimum allowable pressures are such
4 that yard sprinklers frequently do not function well during
5 peak water use periods. Therefore, reuse system piping and
6 pumps must be sized much larger than those used in an
7 equivalent flow rate sized potable water system. The reused
8 pumping station includes four pumps. Two of the pumps were
9 existing pumps relocated to the new reuse pump station. Two
10 new pumps were provided. Each pump is capable of pumping
11 1750 GPM at 210' total dynamic head. One pump is provided
12 for back-up service to meet Class-One Reliability
13 requirements. Therefore, the station has a maximum capacity
14 of 7.5 MGD at peak reuse flow demand. Reuse water demands
15 can peak at rates much higher than the average daily reuse
16 flow use anticipated. For an average reuse demand of 1.6 MGD
17 the peak demand, assuming all residential watering is
18 completed in 6 hours each day plus the Mitchell reuse sites
19 and the Fox Hollow point demands can occur simultaneously,
20 can exceed a factor of 4 which would be 6.4 MGD. This peak
21 flow rate would require a minimum of 2.5 pumps or 3 pumps
22 plus one spare for a total of 4 pumps. The 24 inch reuse
23 mains (trunk lines to service areas) were sized to carry the
24 7.5 MGD peak reuse flow demand while maximizing energy
25 efficiency of the pumping systems. The 16 inch line was

1 sized to accommodate the peak demands of the portion of the
2 service area served by that portion of the line
3 (approximately 6.0 MGD). The 12 inch line was sized to
4 accommodate the peak demands of the service area served by
5 that portion of the distribution system (approximately 4.5
6 MGD). In addition, PSC and FDEP statutes both state that
7 reuse system components are 100% used and useful. Based on
8 all the statements that I made here, it is my opinion that
9 the reuse system is 100% used and useful and that no
10 adjustments are appropriate.

11 Q. Mr. Biddy states that he believes that Chapter 367.0817,
12 which discusses used and useful determinations for reuse
13 systems, does not apply to the elements of this project. Do
14 you agree?

15 A. No. I believe that Chapter 367.0817 specifically applies to
16 all elements of this project because all project components
17 were provided specifically to enable Aloha to provide Part
18 III reuse water to its customers. I am not an attorney,
19 however, the language in this statute is clear, reuse
20 related plant components shall be considered 100% used and
21 useful. In addition, the FDEP also has a statute that states
22 that the reuse facilities, and those plant components
23 provided to meet Class-One reliability needed to support the
24 reuse facilities, shall be considered 100% used and useful.
25 Failure to recognize all of these reuse components would be

1 plainly contrary to these statutes. If Mr. Bidy's
2 interpretation of the Statute was correct, the two new
3 statutes and their strong wording serve no purpose because
4 reuse system components would be treated like all other
5 wastewater system components, thus rendering these statutes
6 meaningless. This is not a reasonable interpretation. I do
7 not believe that the statutes could be more clear. In my
8 opinion, the elements of this project all fall under these
9 statutes and therefore, are 100% used and useful.

10 Q. Mr. Bidy prepared an exhibit, TLB-3. What are your comments
11 regarding that exhibit.

12 A. Mr. Bidy's exhibit TLB-3 is totally useless as the basis
13 for all of his calculations are that excessive I/I exist in
14 the SSWCS. There are no excessive I/I flows being
15 contributed to the SSWCS.

16 Q. Can you tell us your opinion regarding the proper amount of
17 reuse income that should be recognized for the test year
18 based on the Utility's ability to sell its reuse water.

19 A. Yes. In my opinion, the \$47,359 income from the sale of
20 reuse water reported in the MFRs is at best, a very
21 optimistic number. Due to a number of technical and
22 regulatory factors, reuse systems are not able to sell 100%
23 of the reuse water they produce on an annual basis. First,
24 in central Florida, it is not uncommon that 50 inches of
25 rainfall is experienced each year. A substantial portion of

1 this rainfall frequently occurs in a seasonal pattern.
2 During the heavy rainfall seasons, the reuse customers
3 utilize very little reuse water. Since the utilities have
4 limited ability to store reuse water, this reuse water is
5 disposed of in non-revenue generating percolation ponds or
6 by some other alternative non-revenue generating disposal
7 method. Also, FDEP rules prohibit applying reuse water to
8 areas that may "pond" or where reuse water may runoff to the
9 surface waters of the State. This rule further limits the
10 disposal of reuse water during rainy periods. The last data
11 that I have seen, related to the use of reuse water in the
12 Pasco County system, showed that their system, which is
13 quite well managed and much more mature a system that
14 Aloha's, was only able to utilize approximately 50% of the
15 annual quantity of reuse water they produced; and, much of
16 that water was provided to customers at no cost. Other
17 factors that affect the ability of a reuse system to sell
18 their reuse water include: wastewater facility breakdowns or
19 major maintenance work preventing the distribution of reuse
20 water, golf course customer maintenance of their fairways
21 and greens preventing the application of reuse water, major
22 reuse system distribution system maintenance and/or repair,
23 etc. To expect Aloha to be able to sell any major portion of
24 its reuse water at this time would not be reasonable,
25 especially since its system is still very young and many of

1 the potential reuse customers are only beginning to use
2 reuse water for the first time. The largest of the intended
3 reuse customers, Fox Hollow Golf Course, will not pay for
4 reuse water for the first 4 years. The MFRs are in error in
5 assuming that revenue will be derived from this customer.
6 Staff was made aware of this provision of the agreement with
7 this customer. Therefore, the revenue stated in the MFRs are
8 not only overly optimistic by greatly overstated as regards
9 to reuse revenue that should be anticipated. I agree with
10 Staff Witness Merchant that it imputation of revenues is not
11 the proper mechanism to be used to induce Aloha to locate
12 and sign-up new reuse customers. I also agree with witness
13 Merchant that the proper mechanism is to monitor the number
14 of customers Aloha signs-up and the revenue that generates.
15 It is my opinion that the imputation of any revenues based
16 on Aloha's lack of ability to sell its reuse water would be
17 unfair and counter productive. In my opinion, Aloha is
18 progressing at a very rapid pace in brining new reuse
19 related plant and sites on-line and has made the provision
20 of reuse service to its customers one of its highest
21 priorities.

22 Q. Have you prepared an exhibit that shows your actual rate
23 case expense and projected rate case expense to complete?

24 A. Yes. I have prepared a schedule, DWP-1, showing my actual
25 rate case expense to September 1, 2000 and my projected cost

1 to complete. These are all prudently incurred costs related
2 to this rate case.

3 Q. Does this conclude your rebuttal testimony?

4 A. yes.

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25 aloha\30\rebuttal testimony_2.doc

1 BY MR. WHARTON:

2 Q Mr. Porter, would you please provide a summary
3 of the testimony and exhibits that you have provided?

4 A I will. I will attempt to be brief. But I,
5 like Bob, have 25 pages and I will have to go relatively
6 rapidly. In my rebuttal testimony I discuss a number of
7 very important issues. The first of which discussed
8 the -- or my opinion that the system as a whole, both
9 wastewater collection and transport and treatment
10 facilities are 100 percent used and useful. I still
11 maintain that, and my rebuttal testimony goes into that in
12 great detail.

13 There is a number of reasons why I believe that
14 is so. I believe that the collection and transport system
15 is largely contributed, and therefore 100 percent used and
16 useful. Also, there was testimony by, I believe,
17 Mr. Biddy describing why he felt, perhaps, that the
18 collection and transport system may not be 100 percent
19 utilized. My rebuttal testimony went into great detail to
20 describe how sewer systems are designed and what minimum
21 sizing requirements are in the DEP rules that would
22 preclude that analysis.

23 I also discussed in my testimony, rebuttal
24 testimony, the relevance of two rules, one in Chapter 403
25 and the other in, I believe it is 367. One for the PSC

1 and one for the DEP, both of which state that wastewater
2 reuse systems and components thereof, both for the reuse
3 components but also any component that is used to maintain
4 Class 1 reliability should be considered used, and there
5 should be compensation therefore given to the utility to
6 pay for it.

7 Another important issue was the infiltration and
8 in-flow analysis done for the filing. I concluded
9 initially in the MFRs that there was no significant INI; I
10 still maintain that. There was testimony otherwise in the
11 case provided by Mr. Bidy. We went into great detail on
12 that earlier with Mr. Bidy in his testimony. I will
13 reiterate here that the only standards that have been
14 applied by the DEP to determine infiltration and in-flow
15 are by reference. They are in the references in the DEP
16 Rule 62-600 that talks about different manuals and
17 standards that should be applied to all questions
18 regarding wastewater treatment and collection treatment
19 and disposal. And when we -- in Mr. Bidy's testimony
20 earlier we provided the Water and Environmental
21 Federations Manual of Practice Number 8 which clearly
22 states that the 200 gallons per inch diameter per mile
23 standard previously talked about in this hearing was to be
24 used for new construction and new construction only, and
25 that a more appropriate number for older systems and an

1 allowable number could be up to ten times that amount.
2 And that is a standard reference that has been
3 specifically addressed and referenced in the DEP rules and
4 regulations.

5 Based on that, therefore, I have also addressed
6 in my rebuttal testimony that any adjustments to the used
7 and useful components of the treatment plant, the
8 collection system, the reuse system, or any part thereof
9 therefore should not be made based on INI because there is
10 no significant INI and no excessive INI in the system.

11 MR. BURGESS: Mr. Chairman, excuse me, I'm going
12 to have to object at this point. The witness has exceeded
13 the five minutes as specified in the prehearing order and
14 to which Mr. Bidy was held to pretty much upon objection
15 by counsel for Aloha.

16 MR. WHARTON: I don't mean to be argumentative,
17 but I don't agree with that.

18 COMMISSIONER JACOBS: We can solve this. How
19 much longer? One minute. We can go with that.

20 THE WITNESS: There is one very important issue
21 that I also discussed in great detail in my rebuttal
22 testimony, and that was the maintenance, preventative
23 maintenance and on-going maintenance requirement for the
24 new facilities at the treatment plant. We talked in great
25 detail about the difference between warranties which pay

1 for defects in materials and workmanship only, and
2 maintenance costs which are preventative and repair for
3 normal wear and tear on equipment. This is a Class I
4 reliable facility.

5 And we used the 5 percent allowance which is
6 something I have been using for 25 years, but I have also
7 prepared and have available a document that shows in
8 detail just the preventive maintenance component, and I
9 find that I understated that amount. It should be
10 \$188,000 just for preventive maintenance. And I didn't
11 address repair because we don't know what that is going to
12 be. But that 5 percent number is certainly fair and
13 reasonable and, if anything, it is understated.

14 So I feel very strongly that that number needs
15 to be in there to maintain Class I reliability of this
16 facility, and there is just no two ways about it, it has
17 to be there. Otherwise the facility will not maintain
18 that Class I reliability.

19 COMMISSIONER JACOBS: That's it?

20 THE WITNESS: I guess.

21 COMMISSIONER JACOBS: Very well. Mr. Burgess.
22 I'm sorry, is he tendered for cross?

23 MR. WHARTON: We would tender the witness.

24 MR. BURGESS: I have no questions.

25 COMMISSIONER JACOBS: No questions?

1 MR. BURGESS: No, sir.

2 MR. FUDGE: I have no questions.

3 COMMISSIONER JACOBS: Wow. We were fixing to
4 fight about his summary and nobody has any questions. You
5 could have went on for a while longer, Mr. Porter.

6 MR. WHARTON: We move for the admission of his
7 exhibit.

8 COMMISSIONER JACOBS: We will move for admission
9 of Exhibit 29. Show it admitted.

10 Thank you. You are excused.

11 (Exhibit 29 marked admitted into the record.)

12 MR. WHARTON: Sir, have you been previously
13 sworn?

14 MR. DETERDING: No, I have not.

15 COMMISSIONER JACOBS: Shift change.

16 (Witness sworn.)

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18 F. MARSHALL DETERDING

19 was called as a witness on behalf of Aloha Utilities, Inc.
20 and, having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHARTON:

23 Q Would you state your name and professional
24 address for the record?

25 A F. Marshall Deterding of the law firm of Rose

1 Sundstrom and Bentley, 2548 Blair Stone Pines Drive,
2 Tallahassee, Florida 32301.

3 Q Sir, did you cause to be created a document
4 entitled rebuttal testimony of F. Marshall Deterding
5 consisting of 12 pages?

6 A I did.

7 Q And if I asked you those same questions here
8 today would your answers be the same?

9 A Yes, they would.

10 Q Do you have any corrections to make to the
11 testimony at this time?

12 A Well, other than that it is updated through --
13 well, a couple of things. First of all, on Page 9 of the
14 testimony, just a minor change, the paragraph begins
15 during her deposition, four lines down from there the line
16 begins, "utility had sought," it should say "could have"
17 instead of had. Other than that, I don't have any changes
18 other than to note that the supplements to RCN-16 include
19 my updated information that updates what is in here as far
20 as actual and estimated legal costs and expenses.

21 Q Did you also cause to be prepared and prefiled
22 two exhibits, FMD-1 and FMD-2?

23 A Yes.

24 Q Do you have any changes or corrections to those
25 exhibits?

1 A Again, those would be updated by the supplements
2 to RCN, I believe it is 16, the rate case expense exhibit,
3 sponsored by Mr. Nixon in his rebuttal testimony.

4 MR. WHARTON: We would request that
5 Mr. Deterding's prefiled rebuttal testimony be inserted in
6 the record as though read, and that his attached prefiled
7 exhibits be marked for identification.

8 COMMISSIONER JACOBS: Without objection, show
9 his prefiled testimony inserted as though read. We will
10 mark as Exhibit 30 his attached exhibits which I show to
11 be FMD-1 and 2.

12 (Exhibits 30 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ALOHA UTILITIES, INC.

DOCKET NO. 991643-SU

APPLICATION FOR WASTEWATER RATE INCREASE OF

ALOHA UTILITIES, INC. IN PASCO COUNTY

REBUTTAL TESTIMONY OF F. MARSHALL DETERDING

- Q. Please state your name and employment address.
- A. F. Marshall Deterding, Rose, Sundstrom & Bentley Law Firm, 2548 Blainstone Pines Drive, Tallahassee, Florida 32301.
- Q. Please give us a brief outline of your background and experience with regard to water and sewer regulation in Florida.
- A. After graduation from Florida State University with a B.S. in Accounting in August 1976, I began work with the Florida Public Service Commission in January 1977 as an auditor, and ultimately an analyst dealing with rate case matters a great deal of my time. I was always involved in water and wastewater utilities with a little experience in some of the other regulated industries. I left the Florida Public Service Commission in August 1982 to attend law school. After my first year of law school, I began clerking with the Tallahassee office of the Miami law firm of Meyers, Kennon, Lovitson, Frank and Richards in August 1983. I continued to clerk for this firm throughout the remainder of my law school career. In May 1985, I became employed full-time by that law firm as an associate. Ultimately, that firm became what is

now known as Rose, Sundstrom & Bentley. I am now one of the four senior partners in that firm. Throughout this time, I have worked almost exclusively in the area of PSC regulation of private water and sewer utilities.

Q. Have you represented Aloha Utilities throughout this wastewater rate case proceeding.

A. Yes. I have. I have been the attorney primarily responsible for processing Aloha's application for rate increase for its Seven Springs wastewater system.

Q. What is the purpose of your testimony here today.

A. To sponsor all of the exhibits related to legal rate case expense for this proceeding and also to specifically respond to some of the issues raised by Ms. Merchant concerning the legal aspects of rate case expense in her direct testimony.

Q. With regard to the general issue of rate case expense, have you prepared schedules to show the total amount of legal rate case expense expended by Aloha.

A. Yes. I have prepared a schedule of actual expenses to date and also a calculation of the estimated legal cost to complete this rate case. These are attached as **Exhibit "FMD-1"** to this testimony. Copies of all of my bills related to this rate proceeding and detail concerning the basis for my estimate to complete are included in Robert Nixon's Testimony.

Q. Do you believe that the Utility's expenditures on rate case expense, to date and in your estimate, have been reasonable in

light of the requirements imposed within this rate case.

A. Yes. I believe the Utility and my office have been as efficient as is humanly possible in expending only that time and energy necessary to deal with the issues that have arisen during this rate case and that we have done everything within our power to try and keep rate case expense cost to a minimum where we could. I believe all of the expenses incurred by the Utility for the time and energies of my firm and cost incurred in that representation have been prudent and appropriate. I would like to note that in keeping with the Commission's standard policy, we would like to provide supplemental information concerning actual rate case cost as a late filed exhibit after the hearing, to update the actual cost and revise slightly the estimated cost to provide the Commission with the most accurate figures in all areas of rate case expense.

Q. What specific areas of Ms. Merchant's testimony do you intend to respond to.

A. Specifically, I wish to respond to her comments concerning legal costs and other costs incurred relative to the maps and the Petition for Emergency Variance filed in this proceeding and the circumstances which led up to that Petition for Variance and its subsequent withdrawal. In addition, I wish to respond to the comments of Ms. Merchant concerning reduction in rate case expense for matters related to

responding to the deficiency letters from the Staff and primarily related to the legal cost related thereto.

Q. Please address the first issue related to the required maps and the Petition for Emergency Variance.

A. My concern with Ms. Merchant's adjustment on the variance issue is twofold. First, I believe it is inappropriate to make an adjustment under the circumstances. The costs related to seeking this variance are appropriately recoverable as rate case expense because of the circumstances surrounding the request at that time. In addition, the adjustment made by Ms. Merchant proposes to exclude far more of the legal costs incurred by the Utility during this period of time than are related to the request for the variance itself. I will address that issue later.

To fully understand this issue, I must provide some background on the maps and variance request. The Utility has maps in conformance with the provisions of the Commission Rule 25-30.125 F.A.C. in its possession in its Utility's offices and has maintained those maps throughout its existence. However, because the Utility has required (in accordance with Commission rules and its tariff), the contribution of all but an immaterial amount of its wastewater collection system, those maps are simply maps provided by developers after the developers themselves construct and contribute any collection facilities or phase of collection facilities within the

property they are developing. As such, the Utility has a very extensive file of hundreds of maps which constitute the maps it maintains in conformance with Rule 25-30.125 F.A.C.

Prior to filing its Application on February 9, 2000, the Utility had planned to copy all of these maps and provide them to the Staff. Approximately one to two weeks before the Application was to be filed, I, as the Utility representative, called the Chief Staff Engineer, Mr. Bob Crouch, to discuss the issue of what maps were needed in order to comply with the Commission's minimum filing requirements as contained in Rule 25-30.436(6). I told Mr. Crouch of the concern of the Utility that the maps that we had might not present the information that the Staff needed. First, because they only provided maps of each subdivision or phase of a subdivision as developed by the property owner. Secondly, because of the huge volume of maps involved, and third, because the Rule 25-30.436(6) requires information concerning location of customers that were not contained on these maps that the utility maintains in conformance with the standard record keeping rule. Finally, during these discussions, I noted to Mr. Crouch that the Utility's entire water transmission distribution system and sewage collection system are contributed by developers. Mr. Crouch agreed that if the facilities were contributed he did not need maps of the systems at all. He also agreed that a waiver would be appropriate and he would support a waiver

request under these circumstances. Since Mr. Crouch is the person primarily responsible for determining whether or not a utility's filing complies with this provision of the MFRs, I assumed he was the best person at the PSC to discuss this issue with, and still believe that to be the case. Even Ms. Merchant admitted as much in her deposition.

During a meeting between myself and several Staff members on the day before the MFRs were filed, Mr. Crouch was not present because the primary purpose of the meeting was to discuss issues unrelated to engineering or the maps. However, during that meeting, Merchant noted that Rule 25-30.436(6), which contained the waiver provisions within the MFRs had been repealed. The Staff was not fully aware of this fact. Even the Staff's own senior counsel assigned to this case was not aware of that repeal at the time of the meeting. However, further discussions after the meeting with Tricia Merchant revealed that in fact the waiver provision within the Commission's rules had been repealed eight days prior to that date.

Based upon her testimony and comments made in her deposition, Ms. Merchant seems to have three bases for stating that the costs related to the waiver request should be denied.

First, she suggests that the Utility should have filed its request for a waiver at an earlier point in time. While certainly that would have been possible, the facts did not

come to light concerning the specifics of this issue until shortly before the date of the rate case filing. While on the one hand stating that the Commission's own waiver provision had been repealed by the date the MFRs were filed (by eight days as noted above), Ms. Merchant also contends that the provisions of this rule that suggest that a utility should make such a request "as early as practicable", not only guide her thinking with regard to what is prudent for Aloha to have done in this case, but she goes a step further and even suggests that this type of language from a repealed rule almost rises to the level of a requirement and therefore forms a basis for determining the prudence of the timing of the waiver request. I believe such a position is wholly unreasonable under the circumstances as outlined herein. The Utility was trying to avoid expending additional monies that were wholly unnecessary and which the Staff engineer agreed was wholly unnecessary in order to develop maps that complied with the MFRs or to copy literally hundreds of pages of maps of its collection system which would be of no use to the Staff. Either of these alternatives would have caused the Utility to incur substantial additional costs.

When we received the Staff's Recommendation to deny the variance because of their position that it did not constitute an emergency and therefore should not be treated as an emergency variance request, we were very surprised given the

Engineering Staff position as expressed to us. This very much seemed like the Staff was elevating procedure over substance since the engineers at the PSC agreed the information was not needed and was useless.

Upon receiving this Staff Recommendation, I discussed it with the client and what alternatives were available to us to provide something that would meet the requirements of the rule as determined by the Commission engineers. We further discussed this with the Utility's consulting engineers and determined that perhaps some maps which were already in the works for other purposes, but not planned for completion for another four to six weeks at a minimum, could be "fast-tracked" in order to satisfy the Staff. We were not sure that those maps would even when completed technically contain all the information required by the MFR rule. Therefore, we went to the Commission Staff engineer to determine whether or not those maps if completed would satisfy the rule requirements in his opinion if we were able to prepare those maps in an expeditious manner. In part because he had agreed that no maps were necessary, the Staff engineer agreed that he would consider those maps to meet the minimum rule requirements. Based on a belief that preparation of the maps was the cheapest way to resolve this issue for all concerned, we proceeded to direct the Utility's consulting engineer to go forward expeditiously with the preparation of those maps.

Approximately a week later, after intensive work by the consulting engineer over the weekend, we were able to accumulate some maps that the PSC Staff engineer agreed were sufficient to conform to the rule. We then filed those and withdrew our waiver request.

During her deposition, Ms. Merchant also expressed concern with the fact that a petition for emergency variance was more costly to prepare than a basic petition for variance that the Utility had sought at an earlier point in time in this process. I have reviewed the provisions of Rule 28-104.002 and compared them with the additional requirements in Rule 25-104.004 related to the additional requirements for an emergency variance. The petition for a waiver or variance itself under Rule 25-104.002 contains eleven basic requirements. The requirements for an emergency variance as contained in Rule 25-104.004 require two additional items only. Therefore, even assuming that Ms. Merchant is correct that there are any significant additional time necessary to devote to preparing a petition for emergency variance, they are minor. The additional costs of providing those two additional items are minor in relation to the total costs of preparing the petition in the first place. In fact, if you will look at the five full page motion which was filed for this variance, only approximately one full page relates to the issue of a distinction between an emergency versus a non-

emergency variance. However, given that both of these "indicators" suggest approximately 15 to 20% additional time related to the emergency nature of the variance, I would estimate given the other factors involved in filing a document with the PSC of that additional length really constitutes more like a 10% additional factor for the costs related to the "emergency portion" of the variance request.

I do not believe that the actions taken by the Utility with regard to the request for emergency waiver were inappropriate or imprudent. They were an attempt by the Utility to spend the least amount of money complying with a rule that the Commission's own Staff agreed was not necessary or useful to them in reviewing Aloha's rate application. However, once it became apparent that action on that waiver or variance would, at a minimum, be delayed, if not rejected altogether, plus require additional argument by the Utility and legal time in dealing with the waiver issue, we decided the cheapest alternative was to try and come up with something that would comply with the rule as judged by the Staff engineer.

I believe that each step of the way, Aloha took very prudent steps in attempting to minimize costs to the customers in complying with this rule or in seeking to avoid the rule through a waiver request. Based on all of these facts, I believe that Ms. Merchant's proposed adjustments are wholly unreasonable and blatantly punitive.

- Q. You also mention some concern with the way the adjustment was calculated by Ms. Merchant.
- A. Yes, in reviewing Ms. Merchant's testimony and based upon further explanation of the adjustment from her deposition, it became apparent that the adjustment which she made was based upon exclusion of approximately 93% of the legal bills charged to the Utility for the month of February. She stated that because the dates on the bills were unclear, she was unable to distinguish those items related to the variance versus those items related to other matters relevant to the rate case. Therefore, she has excluded over 93% of the bill for the month of February which is the same month in which the Utility filed its MFRs and undertook various other matters unrelated to the variance request. I have therefore gone back through the bill for the month of February and marked those items which are related to the variance and calculated an amount of time actually expended related to it. I have attached hereto as **Exhibit "FMD-2"**, a copy of that calculation. However, I believe that no adjustment is appropriate, but even if it were, it certainly should include only those costs directly related to the variance request itself. A total of those costs is shown on this schedule.
- Q. What other concerns do you have with relation to Ms. Merchant's testimony on this issue.
- A. The Utility did not include any costs related to the

preparation of the maps that were ultimately provided to the Commission as part of the rate case expense in this proceeding. Those costs which are being sponsored by Mr. Watford should be included in any calculation of rate case expense allowed.

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1 BY MR. WHARTON:

2 Q Sir, will you please provide a brief summary of
3 the testimony and exhibits which you have provided today?

4 A Very briefly. I have sponsored those exhibits
5 and those estimates and actual costs incurred in this rate
6 case as updated in RCN-16. I have also briefly addressed
7 the issues of the variance, emergency variance request and
8 the costs related thereto and the circumstances
9 surrounding that variance request and its subsequent
10 withdrawal, and why the utility believes that that was a
11 prudent action on its part, and that the costs incurred
12 should be recognized.

13 I don't think that the Commission can or should
14 decide that anytime a utility files a motion, especially
15 one under these circumstances, that if the staff
16 recommends against it or it is subsequently withdrawn that
17 that demonstrates it was imprudent. I think the
18 circumstances here clearly demonstrate that what the
19 utility did was in an attempt to keep costs to a minimum.

20 And I also am sponsoring the cost analysis that
21 I believe Mr. Nixon has prepared concerning the legal
22 fees, or Mr. Nixon has sponsored concerning the legal fees
23 related to the MFR deficiency response as well.

24 Q Does that conclude your summary?

25 A Yes, it does.

1 MR. WHARTON: We would tender Mr. Deterding for
2 cross-examination.

3 COMMISSIONER JACOBS: Mr. Burgess.

4 MR. BURGESS: No questions.

5 COMMISSIONER JACOBS: Staff.

6 MR. BURGESS: No questions.

7 COMMISSIONER JACOBS: Staff.

8 CROSS EXAMINATION

9 BY MR. FUDGE:

10 Q Mr. Deterding, according to Invoice Number
11 21924, dated March 14th, 2000, Page 2 of your Exhibit
12 FMD-2, on February 4th, 2000, you spoke with Staff Member
13 Redemann. What was the subject of that conversation?

14 A I'm not sure, because I don't recall off the top
15 of my head. But I would assume since it says conference
16 with Crouch and Redemann that that was attempting to speak
17 to them concerning the use of the maps, since I know that
18 Mr. Redemann is a member of the engineering staff who
19 deals with maps a great deal. I would assume that was
20 related to the question of whether or not those maps were
21 necessary, and just the general -- I had been in
22 conversation with them for -- a couple of times on that
23 subject.

24 Q Do you have Mr. Nixon's Exhibit RCN-16?

25 A Yes, I have it.

1 Q Can you please turn to Page 67?

2 A Okay.

3 Q On Invoice Number 21485 dated December 20th,
4 1999, on November 29th, 1999, you again spoke to Staff
5 Member Redemann. What was the subject of that
6 conversation?

7 A Yes. I don't recall. I assume it had something
8 to do with the MFRs, I would assume. But, again, in that
9 context in November I don't believe we had yet contacted
10 the staff about the desire or concern on the map variance
11 issue. So I don't think it was related to that. But it
12 apparently was related to some engineering aspect of the
13 filing.

14 Q Well, why would you speak to Staff Member
15 Redemann when he is not responsible for rate cases?

16 A He is a knowledgeable staff engineer. It is
17 quite possible -- again, I don't recall, that was a year
18 ago, that specific instance. But I would often call a
19 person like Mr. Redemann, who is knowledgeable and has
20 been with the Commission a long time to ask him a question
21 about an area that I think he might know, even though he
22 may not be the assigned staff member. In fact, on
23 November 19th, I'm not even sure we knew who the assigned
24 staff members were. Certainly I recognize he doesn't
25 generally deal with rate cases, but he is a knowledgeable

1 engineer and a PE, and with a lot of experience here.

2 Q Okay. On November 29th on that same page it
3 says conference with Redemann and the subject was the
4 notice and application contents. Was that for the MFRs?

5 A What was that page number again, 67?

6 Q Yes, sir.

7 A And what was the date you were referring to?

8 Q November 29th. It's at the bottom of the page.

9 A Yes. I apologize, my copy is cut off. It says
10 telephone conference with Redemann re, what, notice?

11 Q Yes, notice and application contents.

12 A Again, I don't recall exactly, but it may very
13 well have been related to the required notice that we have
14 to do when we do a filing. We are required to put
15 together a notice to the customers, we are required to
16 distribute the MFRs and do a synopsis and so forth.
17 Again, why I talked to Redemann at that time I do not
18 recall. I'm sure it was probably because either I did not
19 know who was assigned, I could not get in touch with who
20 was assigned, and I felt that Mr. Redemann was a good
21 person to ask the question with his knowledge and
22 experience.

23 Q Are you aware that Mr. Redemann was working on
24 Dockets 990940 and 991699, dockets concerning additional
25 territory for Aloha?

1 A I don't recall one way or the other whether he
2 was. He certainly does generally work in the areas
3 related to certificate extension.

4 Q Well, could that telephone conference about the
5 notice and application contents be in reference to the
6 applications for additional territory?

7 A It is conceivable. I don't know that to be the
8 case, nor would I assume it was, since generally speaking
9 we have separate file numbers for each of our matters that
10 we handle on behalf of a client, and we code those file
11 numbers onto the time sheets.

12 Q According to the rate case summary of Mr. Nixon,
13 RCN-16, you reviewed rules and statutes in October of 1999
14 and in November of 1999, is that correct?

15 A I reviewed the rules and statutes in --

16 Q October and November of 1999.

17 A I probably review the rules and statutes every
18 week.

19 Q Can you describe what rules and statutes you
20 reviewed?

21 A No, I do not remember what statutes and rules I
22 reviewed on any specific day in October or November of
23 1999.

24 Q Do you think you may have reviewed the rule
25 concerning maps for MFR filings on that date?

1 A Since we did not discuss in detail the -- myself
2 and the client until a few weeks before the MFRs were
3 filed the concern about the volume of the maps that the
4 utility had and our desire to possibly seek a variance, I
5 seriously doubt it was from that period of time that it
6 related to those. It was probably more in the nature of
7 the notice requirements, the synopsis requirements, or the
8 general MFRs, or something of that nature. Something that
9 you would expect to normally occur during the early part
10 of a request before it was even filed.

11 Q So it was only a couple weeks before you filed
12 the MFRs that you became aware of the problem with the
13 maps?

14 A It was a few weeks. I can't remember exactly.
15 But I would estimate two, three weeks before, and that is
16 when we contact -- started talking to the staff engineer
17 about the issue. It wasn't so much becoming aware, it was
18 the client telling me we have got literally hundreds of
19 pages of maps that I do not believe will really give the
20 staff what they need, number one; and, number two, they
21 are not necessary for what the staff wants them for, given
22 the fact that I had talked to the staff about what they
23 use those maps for. But that was only two, three, at most
24 four weeks before the filing date.

25 Q On Page 2 of your rebuttal testimony you state

1 that you have worked almost exclusively in the area of PSC
2 regulation of private water and wastewater utilities, is
3 that correct?

4 A Yes.

5 Q Are you on the Commission's list for noticing of
6 rulemaking?

7 A Am I on the Commission's list for noticing of
8 rulemaking?

9 Q Yes.

10 A To be honest with you, I don't know. I am on
11 several lists for noticing, for receiving list of orders,
12 lists of new dockets, agenda schedules, but those are the
13 only three that I can recall off the top of my head that I
14 am on lists for. But I probably would have received
15 notification when a rulemaking docket was opened through
16 one of those lists.

17 Q Do you know if staff had the authority to waive
18 any of the MFR requirements under either the new rule or
19 the old rule?

20 A I have never suggested that the staff had the
21 authority to waive a rule. I simply called the person for
22 whom the information was requested, who would utilize the
23 information, who would determine whether or not it was
24 appropriate to waive the rule requirement, and inquired of
25 them whether they thought it was appropriate under these

1 circumstances for us to seek a waiver.

2 Q Do you know how many hours you spent preparing
3 the portion of your rebuttal testimony that was in
4 response to Ms. Merchant's comments concerning legal costs
5 and other costs incurred relative to the maps and the
6 petition for emergency variance?

7 A No, I do not know off the top of my head.

8 Q On Pages 9 through 10 you state that only one of
9 the five pages of the motion for variance was dedicated to
10 the emergency, is that correct?

11 A Yes.

12 Q And later on you go on to equate that one page
13 out of five to approximately 15 to 20 percent of the time
14 you spent --

15 A It was -- I'm sorry. It was based -- my
16 statement about the estimate of the amount of time related
17 to the emergency nature was based both on the number of
18 pages required and on the fact that the factors required
19 in a standard variance versus an emergency variance, the
20 emergency portion is such a small portion, it is two
21 additional items out of a nine-item pleading. You are
22 going to have to file the pleading anyway, and just about
23 everything you have to do you are going to have to do
24 anyway. So I estimated that probably 10 percent of it was
25 related to the emergency nature of that motion.

1 Q In the number of pages you allocated to the
2 emergency, did you include the approximately page and a
3 half of additional information that you provided to staff
4 in Exhibit 21?

5 A No. Because that was an attempt to show the
6 overall distinction between what was charged related to
7 the emergency nature versus the variance in general. What
8 that exhibit deals with was a request by staff for more
9 information, a greater explanation of the emergency
10 nature. I think we met the rule requirement when we filed
11 the petition. And I don't think there has been any
12 allegation from anyone that we didn't. Certainly no
13 finding that we didn't meet the requirement of the rule
14 concerning demonstrating the emergency.

15 The staff called, asked for more detail, and I
16 gave them more detail. Now, if the suggestion is that we
17 are -- that ought to be adjusted out, too, that just
18 strikes me as bizarre. Because here we are the staff
19 asking me to give them more detail so they can throw out
20 the time I spend giving them more detail? I just don't
21 understand that.

22 Q Will you please turn to Page 69 of RCN-16?

23 A Sixty-nine?

24 Q Yes.

25 A Okay.

1 Q On October 25th, 1999, you have down there
2 review files and old reuse order, is that correct?

3 A Correct.

4 Q In reviewing the old reuse order, did you read
5 the ordering paragraphs in that order?

6 A I don't recall what I read on October 29th, 1999
7 concerning that order. I'm sure my purpose was to relate
8 it to the new rate case in some way, but I don't know
9 exactly what it was I was looking at.

10 Q In reviewing the order you didn't come across
11 the requirement of the utility to file any extensions of
12 the Mitchell agreement with the Commission for approval?

13 A I was aware of that provision. Whether I came
14 across it at that time, I don't know.

15 MR. FUDGE: That's all.

16 COMMISSIONER JACOBS: Commissioners. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q Mr. Deterding, have you found in your experience
20 with the Commission Mr. Redemann to be a knowledgeable
21 source of information regarding the Commission's
22 regulation of water and wastewater utilities on a variety
23 of subjects?

24 A Absolutely. Mr. Redemann has been here for, as
25 I recall, somewhere around 20 years, 15 to 20 years. He

1 is a PE. He is very knowledgeable on areas related to
2 maps, which is his area that he deals with quite often.
3 And certainly to the extent that I call Mr. Crouch or I
4 call one of the other rate people and don't locate them,
5 and I have a question I want answered that day, I will
6 often call somebody like Mr. Redemann. I will often call
7 John Williams and ask him rate questions, and he hasn't
8 been a rate analyst in 15 years.

9 Q Have you found conversations such as that with
10 the Commission staff to be an expedient and cost-efficient
11 way to get information that your clients need?

12 A Absolutely.

13 Q Let's talk about how the bills are done at Rose
14 Sundstrom and Bentley for a moment. You say that when a
15 bill is recorded on a time slip it is coded for that
16 specific file number?

17 A It is coded with a base file number for our
18 client, the client name as kind of a double-check, and
19 then a subfile number for the specific matter which we are
20 dealing with. This is the -- we redid our file numbers
21 for Aloha -- just to give you a feel for that, we redid
22 our base number for Aloha because they have been a client
23 longer than just about any other client of our law firm.
24 And we changed their file number about probably eight
25 years ago, and we have approximately 33 or 34 subfiles

1 since that time for different matters. The reuse case
2 being one file number. In fact, the reuse and water
3 quality case were under one file number, and we have at
4 least 33 others.

5 Q And, Mr. Deterding, then at the end of any
6 particular month, does a complete draft of the bill come
7 back to you for each individual file?

8 A Yes, it does. And I review that and make sure,
9 try and make sure that everything contemporaneously since
10 it has happened in the last 30 days is in the appropriate
11 file, and properly covers an explanation that is
12 understandable to the client and keeping an eye towards
13 the fact that in a rate proceeding the Public Service
14 Commission is going to be reviewing all of these bills, as
15 well.

16 Q And if you recognize that something is in the
17 wrong file, that is your opportunity to move it into the
18 correct file?

19 A That's correct.

20 Q Let's talk about your call to the staff engineer
21 which has been discussed here some today. If you
22 contacted an engineer about a requirement in a rule for
23 which you are contemplating requesting a waiver, and that
24 engineer indicates that he would be amenable to that, do
25 you take that as a positive sign that you should perhaps

1 go forward with the request?

2 A I can't think of a better way to do it when you
3 have an engineer, and I believe an engineering issue, and
4 I believe Ms. Merchant agreed that was the person who
5 would review it for compliance, that is the person who
6 would utilize the information if filed, and I couldn't
7 imagine who else to ask.

8 Q But it was never your understanding that that
9 was somehow the final decision?

10 A Absolutely not. But it certainly was an
11 indicator to me that if we moved forward that the person
12 who would be overseeing that was in agreement that it was
13 an appropriate way to go, and therefore I felt it was a
14 cost-effective way to resolve an issue.

15 Q I think you indicated this earlier, I just want
16 to make sure the record is clear. Did your letter that
17 has been admitted in this proceeding as Exhibit 21 stand
18 for the proposition or was it intended to represent in any
19 way that you believed or felt the petition for waiver you
20 had filed was inadequate in any way under the rules?

21 A Absolutely not. In fact, I believe it was
22 totally in compliance with the rule. And as I recall,
23 again, this was last February, that when Ralph or -- I
24 believe it was Ralph called me and asked me about that,
25 more information, I told him I thought it did comply. But

1 I told him I would write him a letter to give him further
2 explanation, more detailed explanation of the emergency
3 nature of the situation.

4 MR. WHARTON: That's all we have, Commissioner.

5 COMMISSIONER JACOBS: Very well. Exhibits.

6 MR. WHARTON: We would move the exhibits.

7 COMMISSIONER JACOBS: Very well. Show Exhibit
8 30 admitted without objection.

9 Thank you. You are excused, Mr. Deterding.

10 (Exhibit 30 marked admitted into the record.)

11 COMMISSIONER JACOBS: Next witness.

12 MR. DETERDING: I call Steve Watford.

13 - - - - -

14 STEPHEN G. WATFORD

15 was called as a witness on behalf of Aloha Utilities, Inc.,
16 and having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DETERDING:

19 Q Mr. Watford, again, for the record please state
20 your name and employment address?

21 A Stephen Watford, 2514 Aloha Place, Holiday,
22 Florida.

23 Q And you have -- you are the President of Aloha
24 Utilities?

25 A Yes, I am.

1 Q And you have previously provided direct
2 testimony in this proceeding?

3 A Yes, I have. I'm sorry, no, I did not. Not
4 direct testimony.

5 Q Have you previously been sworn?

6 A Yes, I have.

7 Q Did you prepare in conjunction with my office a
8 document entitled rebuttal testimony of Stephen G. Watford
9 consisting of ten pages?

10 A Yes, I did.

11 Q And if I were to ask you those questions in that
12 testimony here today, would your answers be the same?

13 A Yes, they would, with a couple of corrections.

14 Q All right. Please give us those corrections.

15 A Well, first of all, I believe there was a
16 previous order or ruling that a portion of it be stricken,
17 so we don't need to deal with that again probably.

18 Q Yes. Page 2, Line 20 through Page 6, Line 15
19 was stricken.

20 A Yes, that's what I have. And then --

21 COMMISSIONER JACOBS: I'm sorry. Give me those
22 again, please.

23 MR. DETERDING: Page 2, Line 20 through Page 6,
24 Line 15. That is the portion of the rebuttal that should
25 not have been rebuttal and is somewhat subsumed in his

1 supplemental direct.

2 COMMISSIONER JACOBS: Got you.

3 BY MR. DETERDING:

4 Q Go ahead with your corrections.

5 A Also, I believe there is one more correction.

6 Just on Page 9, a typographical error. Line 22, the
7 second word and should be are, A-R-E.

8 Q And you have just -- on this rate case expense
9 you have prepared the information relative to the in-house
10 costs for rate case expense both in the RCN-16 and the
11 supplements thereto?

12 A Yes, I have.

13 Q And attached to that testimony, your rebuttal
14 testimony, you have prepared some exhibits or an exhibit?

15 A Well, I believe there is an exhibit and an
16 attachment that doesn't appear to be marked as an exhibit,
17 which is a letter from one of our other engineers, Civil
18 Engineering Associates, and I also prepared SG-1-1 which
19 was the in-house fees and costs.

20 Q Okay. Do you have any changes or corrections to
21 those exhibits?

22 A Well, I guess other than noting what has already
23 been discussed here in relation to the filing fee.

24 Q Right. To the extent that that is a duplication
25 in the legal bills, that should be removed?

1 A That's correct.

2 Q And also updated for the changes that are
3 reflected in the supplements to RCN-16?

4 A Yes, the composite exhibit that Mr. Nixon
5 prepared and sponsored.

6 MR. DETERDING: Commissioners, I guess for the
7 purposes of marking this exhibit, we should just call the
8 two attachments SGW-1 and Civil Engineering Associates
9 letter, which I think they are both actually part of
10 SGW-1, one is the engineering costs from the other
11 engineering firm for map preparation, one exhibit. So I
12 guess we should mark that as Exhibit 30?

13 COMMISSIONER JACOBS: 31.

14 MR. DETERDING: 31, I apologize.

15 COMMISSIONER JACOBS: The letter is subsumed in
16 that exhibit, correct?

17 MR. DETERDING: Yes. The second page you mean?

18 COMMISSIONER JACOBS: Yes.

19 MR. DETERDING: It is part of SGW-1.

20 COMMISSIONER JACOBS: Very well.

21 MR. DETERDING: It should have been marked as
22 page two, I apologize.

23 COMMISSIONER JACOBS: Very well.

24 MR. DETERDING: I ask that Mr. Watford's
25 rebuttal testimony be inserted in the record as though

1 read.

2 COMMISSIONER JACOBS: Without objection, show
3 his rebuttal testimony as amended be inserted into the
4 record as though read.

5 (Exhibit 31 marked for identification.)

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 ALOHA UTILITIES, INC.

3 DOCKET NO. 991643-SU

4 APPLICATION FOR WASTEWATER RATE INCREASE OF

5 ALOHA UTILITIES, INC. IN PASCO COUNTY

6 REBUTTAL TESTIMONY OF STEPHEN G. WATFORD

7 Q. Please state your name and employment address.

8 A. Stephen G. Watford, Aloha Utilities, Inc., 2514 Aloha Place,
9 Holiday, Florida 34691.

10 Q. In what capacity are you employed by Aloha Utilities, Inc.

11 A. I am the Utility's President.

12 Q. How long have you been so employed?

13 A. I have been an officer of the Utility since 1986 and the
14 President of the Utility for approximately five years. I have
15 been employed with Aloha since 1975.

16 Q. What is the purpose of your rebuttal testimony?

17 A. The purpose of my testimony is to address five basic issues.
18 First is the issue on in-house costs related to this rate
19 proceeding. I have attached hereto, as SGW-1, a schedule
20 showing the approximate total cost for this rate case to date,
21 including notices and filing fees and incidentals as well as
22 estimates for these and travel to complete the case. In
23 order to estimate the cost of notices, we utilized our
24 experience from the last couple of notices we have had to
25 issue as a basis for estimating the costs of the two expected

1 additional notices in this case. The great majority of the
2 in-house costs are related to the noticing and the filing fee
3 with some incidentals for copying and travel related items.
4 We have also incurred a significant amount of monies in
5 preparing the engineering maps required in order to comply
6 with Rule 25-30.440(1)(a) & (b). Mr. Dale Ernsberger, an
7 outside consulting engineer who has worked with Aloha for many
8 years, completed these maps on very short notice, after it was
9 determined that the Commission staff engineers would accept
10 these as complying with the PSC's Rule under the
11 circumstances. He had already begun preparation of the maps,
12 but they were not needed for other purposes for several
13 months. Mr. Ernsberger charged the Utility \$4,617.50 for
14 preparing these maps in order to comply with the Commission's
15 Rule 25-30.440(1)(a) & (b), and did so in a very short period
16 of time. He did not however charge us any premium for
17 expediting those maps. I have attached hereto a schedule
18 showing the additional engineering costs, along with the in-
19 house costs.

20 Q. What other issues need to be addressed by you?

21 A. One item that is of very great concern to me is change which
22 has recently occurred concerning our office building. For
23 over 25 years, we have rented office space from a related
24 party at a price substantially below market value. Mid-summer
25 this year, well after we had filed the MFRs, we were informed

1 by the related party that we would no longer be allowed to
2 rent this office property and would be required to vacate the
3 premises by December 31st of this year. That is about the same
4 time as rates should be going into effect in this rate
5 proceeding.

6 After an extensive search by us, we have now located a new
7 office building which we have expressed an interest in and
8 have, as of today, made a formal offer on. We first had to
9 seek approval from our bank for commitment to provide
10 financing for that building and received that on September 6.
11 The price for the building is \$800,000.

12 It will provide us not only a replacement for our current
13 office building that will be central to our service territory,
14 but it will also provide us much needed additional space for
15 the utility's administrative offices. We have been utilizing
16 the same amount of space in our current offices for many, many
17 years despite the fact that our customer base has grown by
18 many multiples.

19 In addition to the requirement by the related party that we
20 vacate the premises by the end of the year, Aloha Utilities,
21 Inc. has been sued in Federal court for our buildings failure
22 to meet the requirements of the Americans with Disabilities
23 Act (ADA). As such, we are currently negotiating to hopefully
24 settle that lawsuit, and as part of the terms of the proposed
25 settlement, we have agreed to have ADA compliant offices by

1 the end of this year. Therefore, this move is not only
2 necessitated by eviction, but also by compliance with the
3 Americans with Disabilities Act. The current building is not
4 modifiable to comply with that Act.

5 Our annual rental expense to rent the current offices
6 comprising 5,270 square feet is \$17,478 on an annual basis.
7 The new building will cost \$800,000. Based upon discussions
8 with our banker and with the realtor, we anticipate that the
9 annual mortgage payment, including interest, will be \$86,373
10 annually for 6,062 square feet. The annual tax expense based
11 on an estimate provided by the current owner using last year's
12 tax bill is \$11,884. The annual insurance expense is
13 estimated to be \$3,800 by the current owner based on last
14 year's cost. Annual maintenance, as estimated once again by
15 the current owner, is \$3,900 based upon last year's
16 experience. All of these estimates from the realtor combine
17 to total an annual expense of \$106,000. There are also
18 additionally approximately 2,000 additional square feet of
19 office space included with the purchase which will be rented
20 by the third party under a four year lease. With annual net
21 rental income as estimated by the realtor of \$30,000.
22 Therefore, the Utility's net cost for the new building will be
23 \$76,000. Subtracting the \$17,478 of current annual rental
24 expense results in an increased expense of \$58,522 to Aloha.
25 We believe the Commission should recognize this additional

1 cost because it was unforeseeable that the Utility would incur
2 this substantial change in operating costs. And that cost
3 should be allocated to the Seven Springs System in this rate
4 proceeding under the same basis as the rents have been
5 previously.

6 While I recognize that the Commission generally has not
7 recognized new expenses brought to their attention by
8 utilities after the filing of the MFRs in rate proceedings, we
9 believe this is a very different situation. We were not aware
10 of the new rental agreement, nor were we aware that we would
11 have to make substantial changes to the existing building in
12 order for it to be compliant with the ADA Law at the time we
13 filed our original MFRs, or at the time we filed our original
14 Direct Testimony with the MFRs. As such, this is a change in
15 cost that the Utility will begin incurring immediately, and it
16 is one that we could not have known about prior to the case
17 being filed. Surely if the Commission staff determined during
18 their audit that changes had occurred since the filing of the
19 case that caused our office rent expense or any other expense
20 to be substantially reduced, they would recognize those
21 changes. It is therefore only appropriate that they recognize
22 this change that has caused our expenses to increase as a
23 result of having to find new office space, because our
24 landlord has refused to renew our lease, and because of the
25 governmental requirement related to the ADA. For both
26 reasons, I believe that the Commission must recognize this

1 increased cost. Otherwise, the Utility will be forced to seek
2 this change through a separate proceeding at substantially
3 higher cost to the customers of the Utility. The Commission's
4 responsibility under the Statute to set rates on a going
5 forward basis demands that this increase cost be considered in
6 rate setting. The staff was informed of this change in
7 response to discovery approximately 2 months ago when we were
8 asked about known charges.

9 We will endeavor to try and provide the Commission with final
10 documents concerning the purchase of this property by the
11 hearing date if at all possible so that all the information is
12 available to them to review these costs. To the extent we are
13 able to finalize the deal or even a contract in advance of
14 that date, we will provide the documentation even earlier as
15 a supplemental exhibit.

16 Q. What other issues do you feel you need to address?

17 A. There has been a finding by the audit staff, which was
18 subsequently adopted by the citizens that there should be some
19 adjustment to the salary of the Vice President of the Utility.
20 To a large extent, Mr. Nixon has already addressed the failure
21 of the audit staff to take the necessary steps in determining
22 the relative worth of the Vice President to the company. The
23 position appears to have just been adopted by the citizens
24 without any further investigation on their part. This
25 recommendation by the audit staff actually dates back to the

1 initial audit last summer during which the staff calculated
2 the prudent amount of salary, benefits and costs for the Vice
3 President to be pegged at 20% of my salary. This has been
4 carried forward through subsequent audits and now is the
5 position currently held by the staff auditors and the OPC. In
6 fact, it has been only relatively recently that there have
7 been any inquiries made into what benefit Ms. Speer provides
8 to the operation of Aloha Utilities. In discovery in this
9 case, a description of her job duties and responsibilities
10 have been provided to the parties. To date, no one has taken
11 issue with any of the duties and responsibilities delineated
12 for the Vice President and seem to solely be basing the
13 recommended adjustment on tying it to the salary of the
14 President. It would seem that the experience and unique
15 qualifications Ms. Speer brings to the job should be what is
16 at issue here and whether her compensation is just in relation
17 to those. Ms. Speer has a bachelors degree in accounting with
18 a major in finance. However, it should also be noted that
19 above and beyond that, Ms. Speer is an extremely successful
20 business woman. Her business acumen and personal success in
21 many different business ventures speaks for itself. Ms. Speer
22 has herself acknowledged that she spends at least 20% of a
23 normal work week carrying out her duties at Aloha. As the
24 Chief Operating Officer of the Utility, I can state that she
25 was very conservative in her 20% estimate of time. On many

1 weeks, her time either meeting with me in officers' meetings
2 or in dealing with other matters either directly or on the
3 telephone greatly exceed the 20% of the time she has
4 represented as her norm. Ms. Speer as well as Ms. Kurish and
5 myself discuss on a weekly and sometimes daily basis any
6 significant issues before this Utility. During the deposition
7 of Ms. Speer, staff seemed to ask serious questions dealing
8 with issues of minutia and detail that I, being actively
9 engaged in the operation of this Utility approximately 60
10 hours per week, would have to go look up the answers to. This
11 appeared to be some attempt by staff, at a much later date
12 then when the opinion was initially rendered, to bolster their
13 position as to Ms. Speer's participation in the operation of
14 the Utility. The officers of Aloha meet on a weekly basis to
15 conceptually discuss all of the major issues concerning the
16 Utility. Ms. Speer is an intrical part of the formation of
17 all the decisions of a significant nature that occur at this
18 Utility. As Ms. Speer herself has stated, she works
19 approximately 20% of a normal work week at Aloha. Given that,
20 it would be ludicrous to assume that she would read every
21 document, read every Rule, and personally participate in every
22 conversation that relates to the operation of this Utility.
23 That is my job. Most issues discussed between myself and the
24 other officers are discussed on a conceptual issues basis and
25 not by reviewing documents, contracts, rules on a line by line
26 basis. Obviously, given the amount of time she has herself

1 stated she devotes to this Utility, that would be impossible.

2 Q. I believe you had another issue to discuss?

3 A. Yes, it appears that a position has been taken by the Office
4 of Public Counsel that an employee that was added, Pam
5 Yacobelli, should be disallowed as an imprudent expense simply
6 because she is not a specifically delineated line item in the
7 amended Consent Final Judgment. This presumption is ludicrous
8 on its face because this is a general rate proceeding for the
9 entire Seven Springs Wastewater System. Ms. Yacobelli has
10 been added to the administrative staff of Aloha due to the
11 increased workload necessitated by having to comply with the
12 Amended Consent Final Judgment. An additional person,
13 actually probably two additional people were necessary. In
14 fact, Pam is consistently working overtime since being hired
15 in November of 1999 and we are just now bringing the
16 wastewater treatment plant on line with the associated
17 additional reporting requirements that come in to play with
18 that facility going on line. All of the administrative staff,
19 Pam Yacobelli, Connie Kurish and myself work in excess of a
20 standard forty hour work week each and every week, some weeks
21 far in excess. The duties that have been assumed by Ms.
22 Yacobelli ^{are} ~~and~~ predominately associated with the increased
23 requirements brought on by the amended Consent Final Judgment.
24 However, just through normal growth and overall increased
25 regulatory requirements and a general level of under staffing
26 that occurs throughout Aloha, the addition of Ms. Yacobelli

1 was overdue.

2 Q. Do you have any further testimony to provide?

3 A. I am able to discuss at length the circumstances surrounding
4 the required additions to the wastewater treatment plant and
5 any other issues related to reuse and so forth; however, for
6 the purposes of filing my rebuttal testimony and responding to
7 the issues raised by the Staff, the DEP and the OPC witnesses,
8 we felt Mr. Porter was better qualified to answer the majority
9 of those issues. I will be glad to provide any additional
10 information that the Commission needs in order to fully review
11 the issues as raised by either the staff or the other parties
12 in this proceeding.

13 Q. Does that conclude your testimony?

14 A. Yes, it does.

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1 MR. DETERDING: And would request that Mr.
2 Watford please give us a brief summary of your rebuttal
3 testimony.

4 THE WITNESS: Okay. I only have a few issues
5 that I would like to cover here for you, and I will try to
6 be as expeditious as I can.

7 The first issue that I discuss in my testimony
8 is related to our in-house costs related to this rate
9 proceeding. Attached to my testimony is a schedule
10 showing the approximate cost to date and estimate of cost
11 to complete this case. And as we just mentioned, those
12 costs have subsequently been updated and incorporated into
13 Mr. Nixon's schedule. The majority of the costs relate to
14 the noticing of the customers during the various steps
15 required in this case. We also had incidentals as well as
16 costs for travel to complete the case.

17 The second issue that I would like to cover
18 relates to the cost of the utility's engineer in preparing
19 the maps to comply with Rule 25-30.440, Paragraph 1, Sub A
20 and B. Mr. Earnsburger (phonetic), who is a consulting
21 engineer who has worked for us for many years, completed
22 these maps on very short notice, after we had been assured
23 by the Commission's engineers that they would be
24 acceptable for complying with the rule cited earlier.

25 Although Mr. Earnsburger had previously begun

1 preparation of these maps for a similar but different
2 purpose, they were not going to be needed for several
3 months. As my testimony indicates, we were charged
4 \$4,617.50 for the preparation of these maps.

5 The next issue that I would like to mention
6 concerns a position that has been taken by the OPC or the
7 Office of Public Counsel in this case related to a single
8 employee, Pam Yacabelli (phonetic), which was added, and
9 their position is that she should be disallowed, I guess,
10 as imprudent simply because she is not delineated in the
11 amended restated consent final judgment with DEP.

12 Obviously, we feel this is unwarranted because
13 this is not a limited proceeding. It is a general rate
14 proceeding for the entire Seven Springs Wastewater System.
15 The position of OPC seems to be strictly tied to a
16 footnote that appeared in the MFRs which said that the
17 employee was required by the amended restated consent
18 final judgment, and I think as Mr. Nixon also earlier
19 mentioned maybe had we said that she was needed or that we
20 felt that she was required to stay in compliance with the
21 ARCFJ, that wouldn't be an issue in this case.

22 But the fact is she was added for several
23 reasons. A very important one is one that Mr. Nixon also
24 had mentioned earlier, and that is the tremendously
25 increased work load that is involved in complying with the

1 new requirements of this consent and final judgment and
2 the new permit that has now been issued for the facility.

3 Mr. Nixon showed you earlier, I believe, this is
4 the old monthly report. This is actually the intermediate
5 monthly report, and the new one that will be starting next
6 month will be in even greater volume than this, and that
7 doesn't even begin to communicate the amount of
8 coordination and so forth that has to take place to
9 accumulate all of that information under the new operating
10 procedures that we are working under today.

11 However, aside from that, we have been
12 understaffed at Aloha for many years in basically every
13 department. As a matter of fact, the PSC's own management
14 audit team has informed us that they are recommending not
15 only keeping Ms. Yakabelli, but adding another position
16 identical to hers, and then adding two additional staff
17 members, as well. Ms. Yakabelli is necessary to stay in
18 compliance with the new permit and to comply with the
19 amended restated consent final judgment.

20 However, she also assumes other duties that were
21 due to customer growth and demand that have needed
22 addressing for quite sometime. I might also point out she
23 is the only secretarial position that we have on our
24 staff. We produce about 150,000 bills a year, issue and
25 track until closure approximately 9,000 work orders, and

1 deal with a population of about 30,000 people who are
2 customers of our utility and want and receive good
3 customer service.

4 We also have our developers to deal with,
5 letters to write, and so forth, as well as all the other
6 routine business matters that you would expect for a
7 utility the size of Aloha. We do all of this with eight
8 full-time administrative personnel. That includes
9 everything that I just mentioned, and we have one employee
10 that works one day per week. This minimal level of
11 staffing is unheard of in this business, and as I stated
12 earlier your own management audit team --

13 MR. BURGESS: Excuse me. I'm going to have to
14 object. And not worried about the time frame at this
15 point, but this is a summary of the testimony that is
16 prefiled. And he is putting more words than is actually
17 included in the testimony on this particular subject, and
18 he has added a few facts that are not included in the
19 testimony, and I think that is improper. I think he is
20 supposed to summarize at this point and give the
21 Commission an oral summary of what is written down and
22 already prefiled with the Commission.

23 COMMISSIONER JACOBS: First of all, you
24 indicated that there is a summary that is beyond the scope
25 of the testimony.

1 THE WITNESS: I'm done.

2 COMMISSIONER JACOBS: You're done?

3 THE WITNESS: Well, I'm done on that issue, if
4 that helps.

5 COMMISSIONER JACOBS: You're done on your
6 summary or you're just done --

7 THE WITNESS: I'm done on that one issue. I had
8 one other issue to cover.

9 COMMISSIONER JACOBS: Let me ask you to very
10 succinctly cover that issue so we can move on.

11 THE WITNESS: Okay. Finally, the last issue I
12 wanted to discuss were the findings of your audit staff
13 and subsequent recommendation that the salary of the vice
14 president be drastically cut.

15 Mr. Nixon has already addressed in his testimony
16 the steps that should be taken pursuant to the PSC's own
17 audit manual which were never considered prior to the
18 auditor's making their recommendation, and I won't repeat
19 those again here now. It was only very recently, long
20 after the recommendation of the auditors were filed in
21 this case, that the PSC even made any inquiries concerning
22 Ms. Spear's participation in the management of Aloha.
23 There seemed to be a last minute attempt to shore up their
24 position after we pointed out to them that they had failed
25 to follow their own detailed procedures that the PSC audit

1 manual requires.

2 Now, Ms. Spear has a BA in accounting and a
3 minor in finance. However, her tremendous worth as an
4 employee at Aloha goes far beyond that. She is an
5 extremely successful businesswoman that any major company
6 would love to have sit on her board. In fact, she
7 regularly turns down such offers. She has, herself,
8 stated in deposition and in discovery responses that she
9 spends approximately 20 percent of a standard work week at
10 Aloha working on utility matters. I can personally state
11 that she is extremely conservative in that estimate, and I
12 find that I spend probably well in excess of that with her
13 on a regular basis discussing utility matters. She is
14 also available at any time needed by telephone and keeps
15 in constant contact with us if she is not in the office.

16 As you know, she is a major stockholder of
17 Aloha, and as such her participation in day-to-day
18 operation and decision-making is extremely helpful and
19 valuable. I, as the president, don't have to put together
20 proposals, then go seek approval from stockholders on any
21 issue. She is a stockholder who participates in the
22 formation of those decisions and she is intimately
23 involved in every major decision that is formed and then
24 carried forward at Aloha. This provides a wonderful
25 efficiency of operation for Aloha. And the customers, I

1 believe, benefit accordingly. That concludes my summary.

2 COMMISSIONER JACOBS: Very well.

3 MR. DETERDING: I tender the witness for cross.

4 COMMISSIONER JACOBS: Mr. Burgess.

5 MR. BURGESS: No questions.

6 MR. FUDGE: No questions.

7 COMMISSIONER JACOBS: Commissioners?

8 I have not seen any specific documentation which
9 shows division of duties for Ms. Yakabelli. I want to
10 make sure I've got the name right.

11 THE WITNESS: I'm sorry?

12 COMMISSIONER JACOBS: The young lady who was
13 just hired in the secretarial position?

14 THE WITNESS: Ms. Yakabelli.

15 COMMISSIONER JACOBS: Yakabelli. I didn't see
16 anything, but I didn't do an exhaustive search, that lists
17 division of duties, percentage of time across those
18 duties. Is there something that sets that out?

19 THE WITNESS: I believe in response to discovery
20 issues in this case we provided that to staff. That is
21 subject to check.

22 COMMISSIONER JACOBS: If that is the case, then
23 that's fine.

24 THE WITNESS: And I would just point out,
25 Commissioner Jacobs, as I testified, we are not saying

1 that she is wholly working on the increased work load as
2 it relates to this. It is a position that has been needed
3 for a long time. As a matter of fact, as I said, your own
4 management audit team who is wrapping up their management
5 audit that you have ordered them to do in another docket
6 is recommending we hire another person to do exactly what
7 she does now.

8 COMMISSIONER JACOBS: Very well.

9 MR. FUDGE: In response to Staff Interrogatory
10 Number 22, they did provide a job description for
11 Ms. Yakabelli.

12 COMMISSIONER JACOBS: Very well, thank you.

13 COMMISSIONER JABER: Is that interrogatory
14 response in the record?

15 MR. FUDGE: No, Commissioner.

16 COMMISSIONER JACOBS: Let's make that part of
17 the record.

18 MR. FUDGE: That will be Exhibit 32, Utility's
19 response to Interrogatory Number 22.

20 MR. DETERDING: What number was that,
21 interrogatory number?

22 MR. FUDGE: 22.

23 COMMISSIONER JACOBS: Very well.

24 MR. DETERDING: I have no redirect if there is
25 no cross-examination.

1 COMMISSIONER JACOBS: Very well. Exhibits.

2 MR. DETERDING: I would like to move Exhibit 31.

3 COMMISSIONER JACOBS: Show it moved.

4 MR. FUDGE: Staff moves Exhibit 32.

5 COMMISSIONER JACOBS: And could you see that the
6 court reporter gets a copy of that, please.

7 MR. FUDGE: Yes, Commissioner.

8 COMMISSIONER JACOBS: Show Exhibit 32 moved.

9 Thank you very much.

10 (Exhibit 31 and 32 marked for identification and
11 entered into the record.)

12 COMMISSIONER JACOBS: Next witness. Mr. Bidy,
13 I believe.

14 MR. DETERDING: I guess we are to the
15 supplemental direct?

16 COMMISSIONER JACOBS: What about Mr. Bidy's
17 rebuttal?

18 MR. BURGESS: Mr. Bidy's rebuttal, my
19 recollection is there was a ruling on that.

20 MR. JAEGER: All of Mr. Bidy's rebuttal was
21 stricken at the October 2nd hearing.

22 MR. BURGESS: We can try it again, if you want.

23 MR. JAEGER: There was an order prior to the --
24 and then it was on a motion for reconsideration. The
25 order striking it was upheld.

1 COMMISSIONER JACOBS: Okay. I didn't read my
2 prehearing order carefully enough. Very well.

3 Mr. Bidy's rebuttal was stricken, so we are
4 back now to supplemental direct.

5 MR. DETERDING: You're right. Supplemental
6 direct for Mr. Watford.

7 COMMISSIONER JACOBS: A very short absence for
8 Mr. Watford.

9 COMMISSIONER JABER: Chairman Jacobs, just to
10 make sure the record is clear, Mr. Bidy's testimony was
11 stricken after the issuance of the prehearing order by
12 separate order.

13 COMMISSIONER JACOBS: Okay. Very well.

14 - - - - -

15 STEPHEN WATFORD

16 was called as a witness on behalf of Aloha Utilities and,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DETERDING:

20 Q Mr. Watford, just to jump to the testimony
21 itself, you prepared also some supplemental direct
22 testimony, did you not?

23 A Yes, I did.

24 Q Consisting of six pages?

25 A Six pages of testimony, yes.

1 Q And if I asked you the questions in that
2 testimony, would your answers be the same?

3 A Yes, they would.

4 Q Do you have any corrections to that testimony?

5 A No, I do not.

6 Q And you also prepared, did you not, an exhibit
7 that was marked SGW-1 related to the eviction and the
8 offer for purchase related to the new office building?

9 A Yes. There is SGW-1, which is a schedule of
10 expected costs at the new building, and I would
11 characterize the letter as a notice of non-renewal of the
12 lease.

13 Q I apologize.

14 A And also the commercial contract which was our
15 offer, actually a counter offer that was given back to us
16 by the seller of the building that we ultimately purchased
17 and addendums to that contract.

18 Q Okay. And also, I believe, as the prehearing
19 order states, the executed contract for sale of the
20 building is SGW-SD-EX, I guess, or SGW-2, depending on
21 which part of the prehearing order you look at, but you
22 did also submit on September 15th an executed contract for
23 purchase of that office building?

24 A I don't know the exact date that we submitted
25 it, but, yes, we did submit it.

1 Q Okay. Do you have any changes or corrections to
2 those exhibits?

3 A No, I do not, other than some -- obviously some
4 things that transpired after the filing of this testimony
5 that I will address in the rebuttal testimony.

6 MR. DETERDING: I request that Mr. Watford's
7 supplemental direct testimony be inserted into the record
8 as though read.

9 COMMISSIONER JACOBS: Without objection. Mr.
10 Burgess, you indicated that you had -- was this the point?

11 MR. BURGESS: No, sir, I have objections to the
12 supplemental rebuttal testimony of Mr. Watford and Mr.
13 Nixon, not to the supplemental direct.

14 COMMISSIONER JACOBS: Very well. Without
15 objection, show that admitted.

16 MR. DETERDING: And Mr. Watford's two exhibits I
17 would like marked for identification.

18 COMMISSIONER JACOBS: We will mark that as
19 Exhibit 33. And those are -- give me descriptions of
20 those.

21 MR. DETERDING: The first one is the letter from
22 the landlord and the counter offer, that is SGW-1. And
23 then the executed contract was the second that was filed
24 with the Commission on September 15th.

25 COMMISSIONER JACOBS: Very well.

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MR. DETERDING: And those are 33?

COMMISSIONER JACOBS: Yes.

(Exhibit 33 marked for identification.)

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 ALOHA UTILITIES, INC.

3 DOCKET NO. 991643-SU

4 APPLICATION FOR WASTEWATER RATE INCREASE OF

5 ALOHA UTILITIES, INC. IN PASCO COUNTY

6 SUPPLEMENTAL DIRECT TESTIMONY OF STEPHEN G. WATFORD

7 Q. Please state your name and employment address.

8 A. Stephen G. Watford, Aloha Utilities, Inc., 2514 Aloha Place,
9 Holiday, Florida 34691.

10 Q. In what capacity are you employed by Aloha Utilities, Inc.

11 A. I am the Utility's President.

12 Q. How long have you been so employed?

13 A. I have been an officer of the Utility since 1986 and the
14 President of the Utility for approximately five years. I have
15 been employed with Aloha since 1975.

16 Q. What is the purpose of your supplemental direct testimony?

17 A. The purpose of my testimony is to address the issue related to
18 our need to acquire a new office building which was not known
19 about by us at the time of filing our application and, in
20 fact, was not known for six months later. In effect, we did
21 not have an opportunity to file direct testimony on this issue
22 primarily because we were not aware of it for six months after
23 the filing of our application where the Utility's direct
24 testimony must be filed.

25 Q. Why are you filing testimony at this late point.

1 A. Because we have just now been able to nail down approximately
2 what the change in cost will be to Aloha. We were informed in
3 late June of the landlord's intent to evict us. In addition,
4 because of a suit against Aloha by a person claiming that
5 Aloha's offices failed to comply with the American With
6 Disabilities Act, the two items came together at about the
7 same time to demonstrate to us that we had no choice but to
8 relocate our offices. For over 25 years, we have rented
9 office space from a related party at a price substantially
10 below market value. Mid-summer this year, well after we had
11 filed the MFRs, we were informed by the related party that we
12 would no longer be allowed to rent this office property and
13 would be required to vacate the premises by December 31st of
14 this year. That is about the same time as rates should be
15 going into effect in this rate proceeding.

16 After an extensive search by us, we have now located a new
17 office building which we have expressed an interest in and
18 have, as of Monday, September 11, made a formal offer on. We
19 first had to seek approval from our bank for commitment to
20 provide financing for that building and received that on
21 September 6. The price for the building is \$800,000.

22 It will provide us not only a replacement for our current
23 office building that will be central to our service territory,
24 but it will also provide us with a little additional space for
25 the utility's administrative offices. We have been utilizing

1 the same amount of space in our current offices for many, many
2 years despite the fact that our customer base has grown by
3 many multiples.

4 In addition to the requirement by the related party that we
5 vacate the premises by the end of the year, Aloha Utilities,
6 Inc. has been sued in Federal court for our buildings failure
7 to meet the requirements of the Americans with Disabilities
8 Act (ADA). As such, we are currently negotiating to hopefully
9 settle that lawsuit, and as part of the terms of the proposed
10 settlement, we have agreed to have ADA compliant offices by
11 the end of this year. Therefore, this move is not only
12 necessitated by eviction, but also by compliance with the
13 Americans with Disabilities Act. The current building is not
14 modifiable to comply with that Act.

15 Our annual rental expense to rent the current offices
16 comprising 5,270 square feet is \$17,478 on an annual basis.
17 The new building will cost \$800,000. Based upon discussions
18 with our banker and with the realtor, we anticipate that the
19 annual mortgage payment, including interest, will be \$86,373
20 annually for 6,062 square feet. The annual tax expense based
21 on an estimate provided by the current owner using last year's
22 tax bill is \$11,884. The annual insurance expense is
23 estimated to be \$3,800 by the current owner based on last
24 year's cost. Annual maintenance, as estimated once again by
25 the current owner, is \$3,900 based upon last year's

1 experience. All of these estimates from the current owner
2 combine to total an annual expense of \$106,000. There are
3 also additionally approximately 2,000 additional square feet
4 of office space included with the purchase which will be
5 rented by the third party under a four year lease. With
6 annual net rental income as estimated by the realtor of
7 \$30,000. Therefore, the Utility's net cost for the new
8 building will be \$76,000. Subtracting the \$17,478 of current
9 annual rental expense incurred results in an increased expense
10 of \$58,522 to Aloha. We believe the Commission should
11 recognize this additional cost because it was unforeseeable
12 that the Utility would incur this substantial change in
13 operating costs. And that cost should be allocated to the
14 Seven Springs System in this rate proceeding under the same
15 basis as the rents have been previously.

16 While I recognize that the Commission generally has not
17 recognized new expenses brought to their attention by
18 utilities after the filing of the MFRs in rate proceedings, we
19 believe this is a very different situation. We were not aware
20 of the need for new offices, nor were we aware that we would
21 have to make substantial changes to the existing building in
22 order for it to be compliant with the ADA Law at the time we
23 filed our original MFRs, or at the time we filed our original
24 Direct Testimony with the MFRs. As such, this is a change in
25 cost that the Utility will begin incurring immediately, and it

1 is one that we could not have known about prior to the case
2 being filed. Surely if the Commission staff determined during
3 their audit that changes had occurred since the filing of the
4 case that caused our office rent expense or any other expense
5 to be substantially reduced, they would recognize those
6 changes. It is therefore only appropriate that they recognize
7 this change that has caused our expenses to increase as a
8 result of having to find new office space, because our
9 landlord has refused to renew our lease, and because of the
10 governmental requirement related to the ADA. For both
11 reasons, I believe that the Commission must recognize this
12 increased cost. Otherwise, the Utility will be forced to seek
13 this change through a separate proceeding at substantially
14 higher cost to the customers of the Utility. The Commission's
15 responsibility under the Statute to set rates on a going
16 forward basis demands that this increase cost be considered in
17 rate setting. The staff was informed of this change in
18 response to discovery approximately 2 months ago when we were
19 asked about known charges.

20 We will endeavor to try and provide the Commission with final
21 documents concerning the purchase of this property by the
22 hearing date if at all possible so that all the information is
23 available to them to review these costs. To the extent we are
24 able to finalize the deal or even a contract in advance of
25 that date, we will provide the documentation even earlier as

1 a supplemental exhibit.

2 As of Thursday, September 14, we have received a counter-offer
3 to our original offer of \$700,000 for this building. The
4 counter-offer proposes a sales price of \$765,000 plus some
5 changes in terms that will affect the final total price.
6 There will also be some additional improvements needed,
7 including the addition of a drive-thru window, which will
8 slightly increase Aloha's total investment. A copy of the
9 counter-offer is attached. We hope to negotiate the final
10 terms of sale within the next few days and to close on the
11 property before the hearing in this case, if at all possible.
12 We will gladly provide additional information to the
13 Commission at that time or as soon as we obtain it. For the
14 time being, I am attaching a copy of the counter-offer we
15 received today as well as some information from the current
16 owner about the cost of operation, maintenance, taxes and
17 insurance which support the numbers I have outlined above and
18 the notification from the landlord dated June 27, 2000 that we
19 must vacate our current offices by the end of this year. All
20 of these documents are attached as **SGW-1**.

21 Q. Do you have any further testimony to provide at this time.

22 A. No, I do not.

23

24

25

1 MR. DETERDING: I tender the witness for cross.

2 MR. BURGESS: No questions.

3 COMMISSIONER JACOBS: Staff.

4 CROSS EXAMINATION

5 BY MR. FUDGE:

6 Q Mr. Watford, on Page 28 of your supplemental
7 direct testimony it states that you have provided a draft
8 appraisal and that you will provide the final version of
9 the appraisal at hearing. Do you have that with you
10 today?

11 A I'm sorry, where are you at, Jason?

12 MR. DETERDING: I don't think you're in the
13 direct.

14 MR. FUDGE: I'm sorry.

15 COMMISSIONER JACOBS: That is the rebuttal.

16 MR. FUDGE: Then we have no further questions.

17 COMMISSIONER JACOBS: Commissioners? No
18 questions. Exhibits.

19 MR. DETERDING: Move Exhibit 33.

20 COMMISSIONER JACOBS: Without objection show it
21 admitted. Thank you, Mr. Watford, you are excused again,
22 but I think you may want to hold on.

23 (Exhibit 33 admitted into the record.)

24 MR. JAEGER: We have already done Ms. Merchant
25 with her supplemental direct, and I believe we go straight

1 to the rebuttal portion.

2 COMMISSIONER JACOBS: Supplemental rebuttal.

3 MR. DETERDING: And as I understand the desires
4 of the Commissioners, we were going to go with Mr. Nixon
5 so that Mr. Watford could bat cleanup, I guess you would
6 say. And Mr. Nixon just walked out of the room, so if you
7 could give us just a minute.

8 COMMISSIONER JACOBS: We will take a break and
9 go off the record for ten minutes.

10 (Recess.)

11 COMMISSIONER JACOBS: We will go back on the
12 record. Let's see, we were on supplemental rebuttal for
13 Mr. Nixon.

14 MR. BURGESS: Yes, sir. Commissioner, I have
15 objections to the supplemental rebuttal of Mr. Nixon and
16 Mr. Watford, actually, because Mr. Nixon's rebuttal, as
17 you see, indicates that the purpose of his testimony is to
18 sponsor two exhibits that he then says is for the purpose
19 of supporting the testimony of Mr. Watford.

20 A great deal of the objection to Mr. Nixon is
21 based on the objection to Mr. Watford. What I would ask
22 to do, if I could, is make both objections, go ahead and
23 get them out, and then go from there, if that is all the
24 same to the Commission?

25 COMMISSIONER JACOBS: Very well.

1 MR. BURGESS: Okay. I am going to move to
2 strike portions of the testimony and exhibits of Mr.
3 Watford and Mr. Nixon based on my belief that they are, in
4 fact, direct testimony couched as rebuttal testimony. And
5 what I would ask the Commission is to consider where we
6 are right now. We are dealing with a specific issue that
7 was developed late. Not at anybody's fault, but just by
8 the result of circumstances it was developed late in the
9 process. The Public Service Commission granted deference
10 to the utility and allowed them to raise this issue.

11 COMMISSIONER JACOBS: I'm sorry, Mr. Burgess,
12 before you proceed, I'm sorry, I intended to do this at
13 the moment we went back on the record, but what I would
14 like to do very quickly -- and, staff, would you do this,
15 because most of these testimonies were filed after the
16 issuance of the prehearing order, and several of them are
17 not listed. Staff, could you just lay out what the
18 filings have been so that we will be clear what we are
19 talking about now?

20 MR. JAEGER: Okay. Commissioner Jacobs, as you
21 say, this all came about after the prehearing, but we had
22 given them leeway to file their supplemental direct on
23 this special issue, and then also we gave the staff and
24 OPC a time to file supplemental direct, and then we also
25 allowed a time for supplemental rebuttal.

1 COMMISSIONER JACOBS: So we have had filing of
2 supplemental direct --

3 MR. JAEGER: OPC did not file supplemental
4 direct, but the utility filed Supplemental Direct Watford,
5 then staff filed Supplement Direct Patricia Merchant,
6 which we took earlier today and everything, and then the
7 utility filed two supplemental rebuttals on the -- it was
8 last Monday, was it, and that is what we have got left to
9 do. Both Nixon and Watford are the supplemental rebuttal,
10 are the only two, and that is what Mr. Burgess is now
11 moving to strike portions of, and those are the last two
12 witnesses we do have.

13 COMMISSIONER JACOBS: Very well. You may
14 proceed, Mr. Burgess.

15 MR. BURGESS: Thank you, Mr. Chairman. This is
16 the issue that developed subsequent to the initial filing,
17 and after ruling that the company would be allowed to
18 address it, as I recall the Commission asked the utility
19 if they would forestall the statutory deadline and my
20 recollection is that the utility refused. The only point
21 of that is that we are in a tight time frame now. Well,
22 that is where we are and that's fine. It is by the hard
23 work and diligence of both the staff and the utility that
24 we were able to do that, and get testimony, and get direct
25 testimony and get rebuttal testimony and be where we are.

1 But it is important because of where we are and
2 because of the tightness of the time frame that rebuttal
3 really be true rebuttal. There is no luxury to take the
4 timeline necessary, that might be necessary to further
5 examine and have opportunities to examine testimony that
6 comes in that should have been direct but that comes in on
7 rebuttal.

8 And I would ask you to further keep in mind the
9 Public Service Commission order on striking the Citizens'
10 testimony in this case. And it was at the behest of the
11 utility that Mr. Biddy's testimony was challenged. And I
12 will read something from the utility's motion seeking to
13 challenge Mr. Biddy's testimony. The utility alleges that
14 Mr. Biddy could have propounded pages, and pages, and
15 pages of direct testimony on the issue when he filed his
16 direct testimony. What Mr. Biddy cannot do is lay and
17 wait until the rebuttal filing date in the case and then
18 pounce and attempt to prop up his prior testimony.

19 And the Commission in ruling against Mr. Biddy's
20 testimony made this finding, that Mr. Biddy's proffered
21 rebuttal testimony is direct testimony that OPC could have
22 or should have filed in its direct testimony. That Mr.
23 Biddy's testimony covered issues that had been identified
24 as issues in the proceeding, and therefore should have
25 been addressed in OPC's direct testimony. That is what we

1 have here.

2 And what I am suggesting now is that the utility
3 be held to the same standards that the OPC's testimony was
4 held to. And you will recall that I moved for
5 reconsideration and the Commission granted me a good deal
6 of time to address the issues. But also it seemed to me
7 held me to a pretty technical standard of explaining why
8 Mr. Biddy's testimony was actually in rebuttal to the
9 testimony of the staff.

10 And to demonstrate that it was in direct
11 conflict with it as rebuttal and further that it was not
12 testimony that could have and should have been presented
13 on direct. So I'm asking now that the utility be held to
14 that same standard. And what I would say is that with
15 regard to that, the utility -- much of the utility's
16 rebuttal testimony does not meet that standard.

17 What you have is the utility came in with its
18 direct testimony and presented evidence why they believed
19 the costs associated with this building should be included
20 in this rate case or should be passed on to the customers.
21 Ms. Merchant came in and said, basically, I have seen
22 everything that you have filed, I have looked at
23 everything that the staff has received on discovery, and I
24 don't think it meets the standard necessary to demonstrate
25 that they should be passed on to the customers. But she

1 didn't stop there. She said some of the things I would
2 have looked for, for example, are, and then she would give
3 a number of items.

4 Rebuttal testimony to that would be one of two
5 things. It would either be, oh, yes, we did provide those
6 things that you are looking for, or we didn't provide
7 those things, but we didn't need to because our
8 justification lies elsewhere. That is not what the
9 utility did with a great deal of this rebuttal. Instead,
10 they more are less backed a dump truck of information up
11 and poured a bunch more evidence into this case.

12 In other words, what they did was they presented
13 a great deal of evidence that they could have or should
14 have, going back to the language striking our rebuttal,
15 could have or should have put in their direct testimony,
16 but chose not to. And based on that, I would suggest that
17 it should be denied.

18 And what I would like to do is go through and
19 identify specifically those areas where I believe this
20 general proposition that I am referring to can be
21 demonstrated. And I would start with Mr. Watford's
22 testimony, rebuttal testimony. I would start with Page 4,
23 Line 23, and I would -- if you look at this, this is
24 testimony that responds to a statement of Ms. Merchant,
25 which she says on Page 4 of her testimony, that is, and

1 specifically Ms. Merchant says, "I believe that Aloha
2 should have documented the minimum requirements for the
3 new office location." And she doesn't stop there, she
4 says, "Examples of these requirements could have been
5 size, location, availability, cost, et cetera."

6 And she says it then should have been researched
7 and compiled a list of all the available properties that
8 fit the minimum criteria established. So, again, rebuttal
9 would be, we did that, or we didn't do that, but we didn't
10 do that because. Instead what you see in this is
11 basically conceding the point that they did not document
12 it. They say basically with this, we did these things,
13 but we didn't document it. We didn't write it down.
14 Well, that is what Ms. Merchant says. In her testimony
15 she says it should have been documented. So what do they
16 do? Then for all of this that I have identified from Page
17 4 through Page 7, Line 11, basically is providing all the
18 information, the types of information that Ms. Merchant
19 said she would have expected to see at the outset to
20 demonstrate that it was cost recoverable. So I would say
21 that this is information that could have or should have
22 been brought up on direct. It does not rebut her
23 testimony. It basically says, well, okay, here is that
24 evidence now, and we are going to present it. We are
25 going write it down now rather than offering it in the

1 direct testimony.

2 I would move to strike from Page 7, Line 13
3 through Page 22, Line 15, basically on the same grounds or
4 the same principle. This is testimony that responds to
5 Ms. Merchant's testimony on Page 5, Lines 3 through 6,
6 where it talks about the lists that should have been
7 compiled and the information on each of the alternatives.
8 Basically, that is what this is. This is that list.

9 It is about 15 pages listing each of those
10 properties and the alternatives, and documenting the
11 advantages and disadvantages of each, exactly what Ms.
12 Merchant said should have been done or she would have
13 expected in the direct testimony to demonstrate cost
14 recoverability.

15 I would move to strike on Page 22, Line 17
16 through Page 24, Line 4 on the same grounds again. I
17 don't me what it specifically refers to in Ms. Merchant's
18 testimony. I don't see it as being rebuttal. I see it as
19 being information that it is bringing forward now that is
20 not in rebuttal to Ms. Merchant, but rather is just
21 additional information that they could have or should have
22 included in their direct testimony. From Page 12, Line --
23 I mean, Page 24, Line 12 --

24 COMMISSIONER JACOBS: That last section was up
25 to Page 24, Line --

1 MR. BURGESS: Down through Page 24, Line 11.

2 COMMISSIONER JACOBS: Okay.

3 MR. JAEGER: You said 4 earlier, Steve. Page
4 24, Line 4.

5 MR. BURGESS: I'm sorry, I said --

6 COMMISSIONER JACOBS: It should be 11, probably,
7 that is the end of the statement. You're going to the end
8 of the answer, correct?

9 MR. BURGESS: Yes. Page 24, Line 11. I'm
10 sorry, I apologize. I would say that Page 24, Line 12
11 begins to fall into the category that I think is
12 acceptable rebuttal testimony, although I would note that
13 I look at the company's objection to Mr. Bidy's
14 testimony, and its smoking gun was that Mr. Bidy started
15 off saying he wanted to provide comments in response to
16 the staff witness, and Line 15 asks, "Do you have any
17 comments in this regard?" But this is not what I am
18 seeking to exclude.

19 I would begin back with Page 25, Line 13,
20 through Page 28, Line 3. And, again, suggest that if as
21 noted on Page 13 here -- I mean, on Page 25, Line 13, if
22 the utility wanted this for further comparison of
23 statistics for review by the Commission, then it is
24 information that could have and should have been presented
25 in the initial testimony, in the direct testimony on this

1 issue.

2 As I indicated, this particular section that I
3 find objectionable on these grounds would extend through
4 Page 28, Line 3. I would then suggest that the Commission
5 should strike beginning on Page 29, Line 7 through Page
6 29, Line 13. And, again, as not being proper rebuttal
7 testimony. Just the very sentence beginning this, "I have
8 provided extensive additional testimony on the criterion
9 given to the realtor." This is information that they had
10 at the time they filed their initial testimony. They are
11 choosing to incorporate it in rebuttal. They are choosing
12 to bootstrap what should have been direct testimony.

13 I would move that Page 30, Line 3 through Page
14 30, Line 5 be stricken as referencing most of the
15 testimony that I have already recommended be stricken. I
16 would recommend then Page 32, Line 22 through Page 35,
17 Line 17 be stricken. This is in response to Ms.
18 Merchant's testimony, which is on Page 5, Line 19 through
19 21 where Ms. Merchant says that the utility has not
20 supported these new costs; 11,000 for building
21 improvements, 42,000 for new furniture, 2,000 to relocate
22 the phone. This that I have referred to in company's the
23 rebuttal testimony basically provides the support that she
24 says wasn't there when she looked at their offering and
25 found it to be deficient for meeting standards of cost

1 recovery.

2 I would move to strike then from Page 35, Line
3 18 through 36, Line 8, based again that this -- on the
4 same principle. This is in response to Ms. Merchant's
5 testimony on Page 6, Lines 2 through 3, or all the way
6 through Line 7 where she basically said that Aloha did not
7 provide the reason that it used this methodology. And
8 this explains the reason for using that methodology.

9 I would suggest that on Page 36 from Line 8
10 through Line 21 is acceptable. But, again, I would move
11 beginning on Page 36, Line 22 through Page 37, Line 11,
12 that this should be stricken. This is in response to Ms.
13 Merchant's testimony on Page 6, Line 14 when she said --
14 where Ms. Merchant said I have seen the amounts that Aloha
15 has projected, but these amounts have not been supported.
16 They were not supported in the initial testimony in the
17 initial filing. And so now the company rather than
18 saying, oh yes, we did. Based on the evidence you have
19 before you it was supported, or saying we didn't support
20 it, but there is this alternative, instead they basically
21 concede the point but bring in the support that they think
22 that Ms. Merchant was looking for.

23 And then I would consider acceptable through
24 Line 39 -- Page 40, all the way through Page 40. And I
25 would begin again with a motion to strike testimony on

1 Page 40, Line 25, and continuing through Page 41, Line 17
2 basically with the same, with the same proposition that
3 this is testimony that could have been chosen, they could
4 have chosen to put in their direct, they chose not to.

5 That basically is, with maybe a line here and
6 there that references some of this other stuff, in other
7 words, the testimony throughout will include references
8 back to other sections, and those references should be
9 removed, but they really are not of substance. Of
10 substance is what I have identified. And I would
11 recommend that those, along with all the exhibits that are
12 described in those sections, be stricken for the reasons
13 stated, and that would be Exhibits SGW-SR2 through SR7.

14 COMMISSIONER JABER: Mr. Burgess, I was trying
15 to follow as best as I could on the pages and lines. And
16 some of the lines stopped in the middle of the responses.
17 And I hate to do this to you, but if you could go back,
18 especially from the beginning, and give page numbers and
19 lines, that would be helpful.

20 MR. BURGESS: I can. Page 4, Line 23 through
21 Page 7, Line 12.

22 MR. JAEGER: Now, 23 --

23 MR. BURGESS: Now, it starts at the end of an
24 answer, I recognize that, and goes into another question.
25 But if you look at the statement on Line 23 that is the

1 end of that answer, it basically dovetails into the
2 question. That says the information we have gathered
3 since that time supports the estimates as reasonable, had
4 we pursued the rental option. That is information they
5 put together that was available at the time, and then goes
6 into specifying what that is.

7 COMMISSIONER JACOBS: Why don't we begin with a
8 full sentence, that just seems reasonable, so we can begin
9 on Line 20, the full sentence.

10 MR. BURGESS: Okay. Then it would be the
11 sentence beginning on Line 20, yes, sir.

12 That specific objection ended on Page 7, Line
13 12, okay. Now, then I begin an objection on another
14 section that began on Page 7, Line 13, but that -- and the
15 reason I couched the two as separate objections is because
16 the first one was in response to a specific statement in
17 Ms. Merchant's testimony. And this one begins a response
18 in a separate statement to Ms. Merchant's testimony. And
19 then this is the one that would proceed through Page 22,
20 Line 15. I'm sorry, I would stop that objection at Page
21 22, Line 5. I found unobjectionable Lines 6 through 16.

22 COMMISSIONER JABER: Okay.

23 MR. BURGESS: I would begin another objection at
24 Page 22, Line 17 continuing through Page 24, Line 4. I
25 mean, I'm sorry, through Page 24, Line 11.

1 I would begin another objection at Page 25, Line
2 13, and continue that objection through Page 28, Line 3.
3 I would begin another objection on Page 28, Line 22, with
4 the beginning of the sentence on Line 22 and continue that
5 objection through Page 28, Line 25.

6 Now, I guess consistent with what Commissioner
7 Jacobs had asked, the full sentence would end on Page 29,
8 Line 3, although the verbiage and the remainder of the
9 sentence I didn't find objectionable.

10 I objected to the section beginning on -- the
11 sentence beginning on Page 29, Line 7 and continuing
12 through Page 29, Line 13. I objected to the sentence on
13 Page 30, Line 3 through Page 30, Line 5, indicating
14 hopefully the exhaustive explanation that has been
15 provided here in the rebuttal testimony will satisfy the
16 Commission staff, that is the whole point of the
17 objection.

18 I objected to Page 32, Line 22, through Page 35,
19 Line 17. I objected, again, a separate objection because
20 it was on a response to a different question in Ms.
21 Merchant's testimony, but beginning on Page 35, Line 18,
22 and continuing through Page 36, Line 8.

23 I object to Page 36, Line 22 through Page 37,
24 Line 11. And then, as I say, the rest is more incidental.
25 Oh, I'm sorry, then I would begin on Page 40, Line 25

1 through Page 41, Line 17.

2 Those are the objections that I have to Mr.
3 Watford's testimony. As I say, once again, I am simply
4 asking for the same standards that have been applied in
5 this case to exclude rebuttal testimony on the grounds
6 that it could have or should have been filed as direct
7 testimony on issues that had been identified in the case,
8 that that be applied. And then similarly, I have a
9 similar breakdown of Mr. Nixon's. There is a good bit
10 of -- most of Mr. Nixon's falls in the category of
11 supporting information to Mr. Watford's testimony and
12 probably would fall under the same category.

13 The only significant section that I found to be
14 proper rebuttal by these standards in Mr. Nixon's
15 testimony was on Page 1, Line 23 through Page 3, Line 5.
16 I found that to not be something that I would move to
17 strike, but I would move to strike the balance of his
18 testimony based on the same proposition that this is
19 information that if they intended it or felt it was
20 necessary to support their case, then they should have
21 brought it forward in their initial testimony. If they
22 were really intending to rebut Ms. Merchant when she said
23 this is not enough information for the Commission to
24 determine that the costs should be recoverable, then they
25 should have truly rebutted it and indicated that it, in

1 fact, was unnecessary and explain why.

2 COMMISSIONER JACOBS: Very well. Mr. Deterding.

3 MR. DETERDING: Well, this is quite a motion to
4 respond to off the cuff. But the basis, as I understand
5 it, is that, first of all, that Mr. Burgess wants you to
6 treat our rebuttal witnesses the same as his rebuttal
7 witness was treated. They are two very different things.
8 And I think it is best summed up by the comments of
9 Commissioner Baez at the time that it was discussed at the
10 hearing on October 2nd. On the issue related to striking
11 Mr. Bidy's rebuttal testimony, it was not rebuttal at
12 all, it was -- and in a much clearer way than what Mr.
13 Burgess is talking about here.

14 Mr. Bidy took a staff witness from DEP and
15 said, as Commissioner Baez noted, "It sounds -- well,
16 quote, what he meant to say was, and I don't think that is
17 right." Then Commissioner Baez goes on to say, "I think
18 you will agree that saying you are responding to something
19 is entirely different than saying what the witness meant
20 to say was, wouldn't you?" So those are the kind of
21 things we were talking about with regard to Mr. Bidy.

22 He took a DEP witness and said, well, if he had
23 gone farther, what he meant to say. And we haven't done
24 anything of that kind. All we have done is Ms. Merchant
25 said in her testimony that they didn't do these things.

1 They didn't do this analysis. And we said, yes, we did.
2 We didn't put it in a report, but, yes, we did. And then
3 we went on to explain exactly in detail what exactly we
4 did do under those circumstances.

5 She has never said this should be thrown out
6 because they didn't meet this by this deadline. What she
7 said was I don't have enough information that they did
8 these things. So I think that is a very different
9 situation than what happened with Mr. Bidy where he was
10 trying to put words into a witness' mouth of what he would
11 have said, what he meant to say. Whereas what we are
12 doing is specifically, and as Mr. Burgess notes, going
13 down the line, responding to the things she said about did
14 they do an analysis of the alternatives? Did they do the
15 analysis of potential purchase versus rent? Did they look
16 at the various factors that she felt were relevant?

17 COMMISSIONER JACOBS: Let me ask a question.
18 Normally -- in fact, in this instance where there were
19 MFRs that are deficient, there is time allowed to cure
20 that deficiency. How does this differ from that? I had
21 intended to ask Mr. Burgess that. Briefly respond to that
22 question, and then I will come back to you, Mr. Deterding.

23 MR. BURGESS: Well, I think the distinction is
24 very significant. If we are talking about MFRs, what we
25 are talking about is at the outset of a case it is going

1 to take nine months. So there is a deficiency, and they
2 have got time to make the changes, and then the clock
3 begins at that point with the initial filing now without
4 the deficiencies and everybody can respond to it. And it
5 is not rebuttal. It is not the last word. It is not the
6 last thing that is brought forward.

7 And this is not only a situation where this
8 wasn't in the MFRs, again, through no nobody's fault, I'm
9 not casting aspersions. That happened because of the
10 timing of it. But this wasn't even in the initial case as
11 filed. And then the Commission allowed the utility, the
12 Commission using its discretion to allow this utility to
13 bring this issue up at all and gave the utility an
14 opportunity to provide supplemental testimony, saying that
15 it is not proper as rebuttal, but provide supplemental
16 testimony.

17 And then they did, and then you see things that
18 Ms. Merchant -- he says, well, Ms. Merchant doesn't say
19 that they need to be written down. Well, she does. She
20 says document. I would have expected to see documented
21 evidence. Well, documents are written. Documents, they
22 are written reports, and that is what she says she
23 expected to see. And they came in and said, oh, that is
24 what you needed. Well, here, here is 20 pages of it. And
25 we see them for the first time in rebuttal testimony.

1 Nobody has a chance to address them, and I would just say
2 it is procedurally out of place.

3 COMMISSIONER JACOBS: Okay. Thank you.

4 MR. DETERDING: This is an issue --

5 COMMISSIONER JACOBS: Before you proceed.
6 Commissioner.

7 COMMISSIONER BAEZ: Mr. Deterding, before you
8 lose your thought, I think Mr. Burgess has a point in that
9 this information and the analysis that may or may not have
10 gone -- you may or may not have undertaken, there is no
11 way to challenge that. There is no way to address the
12 accuracy of it. There is no way -- it is, in fact, the
13 last word, do you agree with that?

14 MR. DETERDING: It is rebuttal testimony,
15 Commissioner, and that is always the case with rebuttal
16 testimony.

17 COMMISSIONER BAEZ: Well, it is rebuttal. But,
18 again, this information is new. It is not anywhere that I
19 have seen but here. And I just -- I'm having trouble
20 saying that to accept it -- I'm sorry, I didn't mean to
21 interrupt, but I'm having trouble accepting the notion
22 that saying, all right, well, we will take this as
23 rebuttal testimony. Now all of a sudden we have given it
24 some sort of stamp of approval as to its accuracy, as to
25 its prudence, as to its appropriateness.

1 MR. DETERDING: And I don't think that is true
2 any more in this rebuttal than any other. We are in a
3 situation where this is very much a developing issue. The
4 utility closed on this property three days ago. They
5 closed on this property Monday afternoon. That was fully
6 recognized when the Commission decided to allow us to
7 present this rebuttal, I mean, this direct on September
8 15th. We did not have even at that time a contract. We
9 filed one a couple of days later. But this rebuttal is no
10 different than any another in that regard.

11 We put in evidence in response to claims that we
12 had not gone through the motions that she felt were
13 necessary in order to determine whether this was an
14 appropriate purchase, or this was the appropriate choice,
15 and that else what she is talking about. And all we said
16 was, we were not going to back and say here is the paper.
17 We had given them most of this stuff that existed at that
18 time in response to discovery. And we had tried to keep
19 them informed about everything that went on, all the
20 parties, as it went on.

21 But when she says you did not do this, that is
22 not correct. What we came back and said is we did do
23 this, and we gave them a list of how we reviewed these
24 things and what instructions we did give to our realtor.
25 To suggest that what she is saying is it had to be in a

1 report form, well, she admitted herself on the stand that
2 she knew of no case in which that had ever been done
3 before. So to suggest that her concern was simply that
4 you didn't provide me a written report, I don't think that
5 is it at all, and I don't think that is what she says in
6 her testimony. She said, "I don't have the information I
7 need." And in some cases she said, "I can't tell that you
8 have done this." And what we did in our responsive
9 testimony was saying we did do those things. We did jump
10 through those hoops. We did analyze the alternatives.
11 And I think this is as rebuttal as it gets, and it is
12 very, very different than that that Mr. Bidy has
13 provided, which was stricken, wherein he tries to rephrase
14 what a witness says, and says what he would have said.

15 MR. BURGESS: I have got -- I have to address
16 that. The problem is we are talking a little bit at cross
17 purposes.

18 COMMISSIONER JACOBS: Before you go on, let's
19 make sure we get done with one side.

20 MR. DETERDING: I was just going to note the
21 only thing I had left was that we had a schedule set up in
22 recognition of the fact that the alternative for this
23 utility company through no fault of its own, as Mr.
24 Burgess has said, the alternative is to file for a limited
25 proceeding. So we went through this process on very short

1 notice. We had a discovery schedule set up. Public
2 Counsel chose to do no discovery on this issue. Public
3 Counsel chose to put no witness on on this issue.

4 COMMISSIONER JACOBS: Mr. Deterding, didn't you
5 have as an option to amend your filing and waive your
6 time?

7 MR. DETERDING: No, sir. Not only did we not
8 have that because it would drive us to bankruptcy, but we
9 would be in violation of our loan covenants, and we could
10 not do that. That was not a viable alternative. Given
11 the magnitude of this addition to our plant, there was no
12 way on earth we could have done that.

13 COMMISSIONER JACOBS: Okay.

14 MR. BURGESS: We have been speaking a little bit
15 about two different things. Just to understand,
16 Mr. Biddy's testimony was objected to by the utility on
17 two grounds: One, that he didn't truly definitively
18 rebut, he didn't come at direct perpendicular
19 cross-purposes with the staff witness. They seized on
20 terms like what are your comments to his testimony. And
21 the other ground was that it was information that could
22 have or should have been produced in direct testimony.

23 Now, as I read the Commission's determination on
24 it, the Commission did not reject it on the first ground,
25 it did not reject it on that ground. It rejected it

1 solely on the second ground, that is that the testimony
2 could have or should have been filed on direct testimony.
3 That is why I have couched my objection strictly on that
4 second ground.

5 If I wanted to go in and say this particular
6 piece of testimony does not appear to directly contradict
7 Ms. Merchant, there are a number of other areas. But I
8 was trying to stick to those areas that fell within the
9 category of that objection that was accepted by the
10 Commission. That is that this was issues identified
11 during the proceeding, should have been addressed during
12 the direct testimony. And based on that we have done it.
13 Now, when Mr. Deterding has gone back and responded he has
14 kind of brought us back in a little bit to that statement
15 that Mr. Bidy's testimony was not really directly in
16 rebuttal to Mr. MacColeman. He was say saying he tried to
17 put words in his mouth. That wasn't the grounds on which
18 the Commission accepted their pleading to strike.

19 The Commission accepted it based on the grounds
20 that the testimony should have been offered as direct.
21 And so restricting it to that, I would say that with
22 regard to Mr. Bidy's -- the finding that Mr. Bidy should
23 have known that a witness from DEP might make certain
24 statements and he should fully flesh that out, well, I
25 would say this falls into that category not only just as

1 much as Mr. Biddy's, but multi-fold more.

2 MR. DETERDING: Well, what I read to you from
3 Commissioner Baez were comments that he made before he
4 made the motion for denial. Now, that in my book is what
5 the basis was for this denial. It was that this is using
6 rebuttal as clarification of testimony of another witness.
7 That is not what we are doing here.

8 MR. BURGESS: Do you need the order?

9 COMMISSIONER JACOBS: No. Please one at a time.
10 We have to help the court reporter. Go ahead.

11 MR. DETERDING: Well, they are clearly two very
12 different things to me. And this rebuttal testimony is
13 what I think you would expect when the staff witness, a
14 person who is claiming that you have not provided
15 sufficient information for them to review says that that
16 is the reason why she cannot go along with it.

17 Again, I think you have got to consider the fact
18 that this was granted on recognition that it was very
19 short notice, that we were getting information to the
20 Commission as fast as we could and to the other parties as
21 fast as we could, and it just closed three days ago. And
22 we have done our best to try and do this to in the
23 long-term, keep costs down to the customers. We have
24 provided more information on this office building than I
25 think has ever been provided, and the alternative is to

1 pursue a limited proceeding.

2 COMMISSIONER JACOBS: Commissioners.

3 COMMISSIONER JABER: Mr. Chairman, I was going
4 to just ask you if you minded if we heard from staff. I
5 would like staff's recommendation on this.

6 COMMISSIONER JACOBS: Very well. Staff.

7 MR. FUDGE: Commissioner, as Mr. Burgess
8 stated --

9 COMMISSIONER JACOBS: Just a moment.

10 COMMISSIONER BAEZ: Before you address your
11 recommendation, the parties have pointed up at least to
12 me some -- they have raised a conflict to me.
13 Procedurally did we deny a motion for reconsideration, and
14 refresh my memory. Were we denying a motion for
15 reconsideration, because that raises -- if that is a fact,
16 it raises to me what the relevant grounds were.

17 MR. FUDGE: Yes, Commissioner, you denied OPC's
18 motion for reconsideration of the prehearing officer's
19 order to strike Mr. Bidy's rebuttal testimony.

20 COMMISSIONER BAEZ: Now, so then -- and I guess
21 I'm speaking against my own interests here, but then what
22 my opinion or what my personal grounds might have been on
23 the merits of the argument become irrelevant. What
24 becomes ratified is the grounds of the prehearing
25 officer's order?

1 MR. FUDGE: Yes, Commissioner, because you were
2 applying a different standard to see if any mistake of
3 fact or law was made in the prehearing officer's order.

4 COMMISSIONER BAEZ: And I just want to have that
5 clear, because as far as discussion goes, a lot of things
6 get said that kind of bleed over into what the merits may
7 be that weren't considered before. And I just want to
8 understand what role that plays or what importance that
9 plays as a basis for this discussion that we are having.

10 MR. FUDGE: It would probably be treated as just
11 dicta. It was just your statements concerning the motion
12 for reconsideration and not readdressing the motion to
13 strike the rebuttal testimony.

14 COMMISSIONER BAEZ: Well, but there was still a
15 lot of discussion as to what the testimony that was being
16 sought to be admitted or stricken at the time was. And
17 much less conversation than my recollection as to what the
18 standard -- as to the legal standard that was going to be
19 applied on reconsideration. And that is just the way it
20 turned out. We can't take it back now. I just want to be
21 clear what we did then and how it should apply here.

22 MR. FUDGE: Commissioner, I think the discussion
23 at the October 2nd and 3rd hearing over the propriety of
24 Mr. Bidy's rebuttal testimony was just a discussion to
25 determine if the prehearing officer had made a correct

1 ruling and was in no way making an additional ruling to
2 strike the rebuttal testimony.

3 COMMISSIONER BAEZ: Thank you. And, I'm sorry,
4 I interrupted. You were going to provide some type of
5 guidance or --

6 MR. FUDGE: I guess you helped me out for half
7 of it, because I was just going to point to the prehearing
8 officer's order which stated, as Mr. Burgess said, that
9 Mr. Bidy's proffered rebuttal testimony is direct
10 testimony that OPC could have or should have filed in its
11 direct testimony. And using that basis, Mr. Watford's and
12 Mr. Nixon's testimony does nothing more than bolster their
13 direct testimony case. It does not say that Ms. Merchant
14 is wrong for requesting this information, it just provides
15 the information that she requested. And I think Mr.
16 Bidy's rebuttal testimony was more in line with
17 traditional rebuttal, because he was actually
18 contradicting what the staff witness had said.

19 COMMISSIONER BAEZ: In some instances, at least.

20 COMMISSIONER JABER: Mr. Fudge, I don't know
21 when you were made aware of the OPC motion to strike, but
22 have you had time to verify whether this is information
23 and testimony that the company had in its possession when
24 they filed the supplemental direct case?

25 MR. FUDGE: There is no way to determine that,

1 but it would seem if they have been actively seeking
2 different leases and the costs for the new build, it
3 didn't come up -- upon them when they filed their rebuttal
4 testimony. It was gathered long before that.

5 MR. DETERDING: Commissioner, if Ms. Merchant
6 had said in her testimony that Aloha should have talked to
7 four realtors, does that impose upon us a burden in our
8 direct testimony to have talked to four realtors? What we
9 tried to do was respond and provide her to show her what
10 we did. She said you didn't do these things, or I can't
11 tell that you did these things, or you haven't prepared
12 this report. Well, we may not have prepared the report,
13 but we did most of the things that she was alleging we
14 didn't do. So we were responding to her that, yes, in
15 fact, we did. And here is what we did.

16 COMMISSIONER JACOBS: Here is my concern. At
17 the point in time that those issues come up, we are
18 writing on a sheet of paper that is essentially --
19 basically has all of the critical pieces of information on
20 it. And what we come in with is an eraser, or we come in
21 with an extra pencil and put things in a blank space it
22 sounds like. It sounds like that is adding to the
23 original case.

24 MR. DETERDING: Well, I don't perceive it that
25 way. What it see it as is we had -- we gave some

1 information concerning the rate impact that we had
2 reviewed alternatives available to us, and this was the
3 best one. That is the basic thing that we gave -- and
4 here is the revenue impact in our testimony. She came
5 back and says I don't have enough detail to see that you
6 went through, jumped through the hoops that I think were
7 appropriate in order to make that decision, and we gave
8 that clarification.

9 As far as the dollar impact on rates of
10 purchasing the building, I don't think the rebuttal does
11 much except to give updated information and then to show
12 her where we had done the things that she alleged we
13 should have done in making that decision. I don't think
14 it is so much new as supportive information that she said
15 you should have done in order to make this decision, to
16 show that we did do those things.

17 COMMISSIONER BAEZ: You know, it is a real fine
18 line. And to borrow Mr. Burgess' phrase, oh, yes, we did.
19 It seems that on some level that is, in fact, what you
20 are -- the character of the testimony is, oh, yes, we did
21 and this is -- but for me it always comes back to when you
22 made the decision to include the building, why is that --
23 why doesn't the information show up then? I mean, what
24 process, if we are all -- if we are in support mode, okay,
25 if every claim that you make, and we all understand that

1 it somehow needs to have some support, when you make the
2 decision to lay claim to the building, so to speak, why
3 does the support mode not kick in there? What makes you
4 so, oh, we don't have to really show other properties that
5 we looked at or other opportunities?

6 MR. DETERDING: Because I think, Commissioner,
7 that what was elicited from Ms. Merchant and was in the
8 response to her about what she claimed needed to be filed
9 clearly shows in this record and will show to the extent
10 those things are allowed in in this rebuttal testimony
11 that this is unprecedented. To say that you need to do a
12 cost/benefit analysis, to say that you should have given
13 your realtor a list of criteria. To set out requirements
14 like that for a building has never been done before.

15 What we gave you in our direct was the cost of
16 this building, and that has changed very little, the
17 little tweaking for information that has come to light
18 since September 15th when we filed this direct. But what
19 we have given is to show what steps we went through when
20 she said you should have gone through these steps. I
21 don't think that is -- it's a moving target. If we file
22 our direct and then her direct is allowed to be seen as --
23 or anyone's direct is allowed to be seen as, oops, I think
24 you should have jumped through this hoop and you didn't
25 show that you jumped through this hoop, if we can't at

1 least say, yes, we did, then I don't know what the nature
2 of rebuttal is.

3 COMMISSIONER JACOBS: But here is the point, 'I
4 think, where Mr. Burgess' argument takes on some merit.
5 If you agree that the hoops are what Ms. Merchant say they
6 are --

7 MR. DETERDING: We don't. And we have said that
8 repeatedly.

9 COMMISSIONER JACOBS: Then he argues that you
10 didn't, and that that should have been the first point
11 made in your rebuttal.

12 MR. DETERDING: But we said in our rebuttal that
13 we did not agree. That this was unprecedented. We had
14 never heard of a proposal where we had to file
15 cost/benefit analysis, or -- and I think through the
16 cross-examination of Ms. Merchant it was clear she knew of
17 no case where anything had been required for an office
18 building. And all utilities have office buildings. I do
19 believe that is what we have said, and I think we have
20 said it in both the testimonies of Mr. Nixon and
21 Mr. Watford.

22 COMMISSIONER BAEZ: Is that a fair
23 characterization of Ms. Merchant's testimony? Because I
24 understood her to say it is like an expense that needs
25 support, it is like any other item that needs supporting.

1 And by saying -- and I agree with you when you say that
2 she may have said it is unprecedented and that, you know,
3 she doesn't know of any case where this may have been
4 outlined. But certainly if a building or any other type
5 of facility -- I mean, you do support, you do have cost
6 support for pipes and other facilities, don't you?

7 MR. DETERDING: No, sir. We do not do a
8 cost/benefit analysis before constructing a pipe, before
9 getting a contractor, before constructing a plant.

10 COMMISSIONER BAEZ: When you are deciding
11 whether to put an 8-inch pipe or a 10-inch pipe, there are
12 some cost/benefit analysis involved there, aren't there?

13 MR. DETERDING: There are no written reports.
14 No, sir.

15 COMMISSIONER BAEZ: You are not looking at
16 future -- you know, in order to say, well, a 10-inch pipe
17 might have been better or worked better?

18 MR. DETERDING: Commissioner, our engineer, or
19 our president, or someone on the staff, or a consultant
20 will no doubt to the extent that that is a consideration
21 as a future need down the line from that pipe, will look
22 at that. But they won't prepare a report. And certainly
23 when we file the MFRs and show the Commission staff that
24 we invested in this much 8-inch pipe, nobody ever suggests
25 that we have to file a cost/benefit analysis or a report

1 saying we looked at 10-inch line as opposed to 8-inch
2 line.

3 COMMISSIONER BAEZ: But you have got testimony
4 somewhere that says the cost of a 10-inch is \$1.50 as
5 opposed to the cost on an 8-inch is a dollar.

6 MR. DETERDING: No, we don't.

7 COMMISSIONER BAEZ: I read it -- of the few
8 things that I have read today specifically that was in
9 there somewhere and I can find it. Now, I'm not saying --
10 and maybe that doesn't constitute a cost/benefit analysis,
11 I don't know. I'm not trying -- I am only mildly
12 disagreeing with you, because I have a real conflict here.
13 I think the information that is being provided on balance
14 is valid.

15 MR. BURGESS: Commissioner --

16 COMMISSIONER JABER: May I ask a question?

17 COMMISSIONER JACOBS: Let's let Commissioner
18 Baez finish.

19 MR. BURGESS: What I have moved to strike is
20 being mischaracterized a little bit. And that is the one
21 thing I want. And Mr. Deterding is objecting to the
22 dismissal of some of the testimony that I explicitly left
23 in, explicitly avoided moving to strike. All of his
24 testimony where he is saying this is unprecedented, and
25 all of that, that is all testimony that I said is proper

1 rebuttal. It is in direct response. And so I just want
2 that understood that all of those sections where they said
3 they have examined the costs of the new building, where
4 they have said what they have done, I didn't object to.
5 It is bringing in the information that they are saying
6 provides that comfort to what Ms. Merchant said. Thank
7 you.

8 COMMISSIONER JACOBS: Very well. Commissioner
9 Jaber.

10 COMMISSIONER JABER: Mr. Deterding, you
11 acknowledge it is the utility's burden of proof in a rate
12 proceeding?

13 MR. DETERDING: Yes.

14 COMMISSIONER JABER: Do you believe you have met
15 your burden of proof on your direct case?

16 MR. DETERDING: Yes.

17 COMMISSIONER JABER: My motion is to grant OPC's
18 motion to strike the testimony and let me explain why. I
19 will throw out a motion to move this along, and if you all
20 agree, fine. I read this testimony last night. I didn't
21 know anything being a motion to strike my reading of the
22 testimony at first glance, it was repetitive, there were
23 exhibits that immediately I looked at the dates and
24 recognized that those exhibits could have come in on the
25 direct case. If you truly believe you have met your

1 burden of proof in your direct case then you won't care
2 that portions of this testimony need to be stricken. That
3 is my motion.

4 MR. DETERDING: It is responsive to
5 Ms. Merchant, that is all --

6 COMMISSIONER JACOBS: Excuse me, excuse me.

7 COMMISSIONER BAEZ: And I will tell you, and I
8 started to say something, I think the information -- I
9 think the information is valuable. But I get caught up on
10 answering the question is should you have or could you
11 have provided the information at the appropriate time as
12 part of a direct case. And I think -- you know, I think
13 Commissioner Jaber asked the crucial question here. If
14 you think you met your burden, and if you didn't think
15 that it was necessary to provide that type of information,
16 then it doesn't matter if it comes out. And I think Mr.
17 Burgess lends you some help here. Because if Ms.
18 Merchant's position is they should have provided some
19 information, and you say that is unprecedented, then that
20 gives us something to weigh, whether it is unprecedented
21 or not. So I am going to second it with the further
22 statement that I really think the information was
23 valuable, I just don't think it is a proper place to put
24 it.

25 MR. DETERDING: All right. Let me --

1 COMMISSIONER JACOBS: Excuse me. We have a
2 motion and a second.

3 MR. DETERDING: Commissioner, before you vote on
4 that I would like to say something, but go ahead. I
5 really believe I need to say something before you vote on
6 that. It is relevant --

7 COMMISSIONER JACOBS: If you have a deep need to
8 say it, we would not feel good walking away.

9 MR. DETERDING: I will limit it to one thing,
10 and that is that I have not had the opportunity to review
11 the detailed analysis of this testimony that he claims
12 fits within that motion. Now, I think it is ridiculous
13 for me -- for it to be suggested that I be able to walk in
14 here, hear him rattle off the list of pages and line
15 numbers that apparently constitutes the majority of this
16 testimony, and me be able to respond whether or not this
17 sentence, this sentence, and this sentence are within the
18 scope of his motion.

19 MR. WHARTON: There was no need for this motion
20 to be made ore tenus.

21 COMMISSIONER JACOBS: Excuse me, let's make sure
22 that -- that was extra argument. I don't think we need to
23 do that. Commissioners, having had a motion and a second,
24 before we take the vote, I am prepared to move this along,
25 but the last point that was raised, it is a good thing you

1 raised that, because I had thought of that earlier. And I
2 had given some thought that this is a very lengthy ore
3 tenus motion that we had some difficulty following, and I
4 wondered if it would be useful for us to hold off the
5 ruling, do a ruling by order, and then conform the record
6 to that ruling.

7 COMMISSIONER JABER: Well, it would come to me.
8 Let me tell you what is wrong with the statement that was
9 made. It is clear in rules of evidence, and especially
10 practicing in front of the PSC that you can't take as a
11 guarantee insertion of testimony into the record. It is
12 not like parties are not on notice that there is going to
13 be cross-examination and possible objections to the
14 insertion of testimony into the record. But, you know, if
15 you want to defer ruling --

16 COMMISSIONER JACOBS: No, it would be for our
17 purpose. It is not for the company to make extra oral
18 argument. If you feel comfortable, and obviously you do,
19 you have made the motion, if you feel comfortable moving
20 forward and voting today, I'm comfortable.

21 COMMISSIONER JABER: The motion is going to come
22 back to me. I have already made a motion to grant OPC's
23 motion to strike. But, Mr. Chairman, you know, I would
24 defer to what you want to do.

25 COMMISSIONER JACOBS: No, this is on your

1 motion. If you want your motion to stand, I won't
2 interfere with that. Commissioner Baez has a question.

3 COMMISSIONER BAEZ: Forgive me. Exactly what
4 did you suggest, to have staff conform based on the
5 ruling?

6 COMMISSIONER JACOBS: The record to the ruling.
7 That was only a suggestion. If you want your motion to
8 stand, we will let it stand. That is not a problem at
9 all.

10 COMMISSIONER JABER: I'm sorry, I don't
11 understand. Conform the record to what?

12 COMMISSIONER JACOBS: If we wanted extra time to
13 review the motion and the testimony in order to make a
14 ruling, then the suggestion would to be hold off making a
15 final vote today.

16 COMMISSIONER JABER: It's really up to you all.
17 I had him repeat the pages and the lines. I read the
18 testimony. I have heard the motion.

19 MR. DETERDING: But we have barely even gotten
20 the opportunity to hear the reference to what was wrong
21 with each page and line. Our opportunity to respond to
22 this has been him go through a list of what was wrong with
23 each one, and then we are expected to respond right off
24 the cuff. I don't think that is reasonable. I would
25 suggest that we be given an opportunity to brief this

1 issue.

2 COMMISSIONER JACOBS: With all due respect, Mr.
3 Deterding, you have had notice, you had motions filed, you
4 had the testimony before you. Most of it was your
5 testimony. So the element of surprise, if present, is
6 very minimal at best.

7 MR. DETERDING: This the first we have heard of
8 this motion. Today, half an hour ago, is the first I have
9 heard of this motion.

10 COMMISSIONER JACOBS: That is correct. I'm
11 sorry. You didn't have a written motion.

12 MR. DETERDING: We weren't told of his intent to
13 make it.

14 COMMISSIONER JACOBS: However, the motion has
15 been made. I believe we have sufficient information
16 before us to make the call, and there is a second to that
17 motion. And the motion having been made and seconded,
18 show that it is approved without exception, without
19 exception. And so the motion to strike those portions of
20 the testimony as previously cited is approved.

21 MR. BURGESS: Thank you, Commissioner.

22 COMMISSIONER JACOBS: Mr. Deterding, your
23 witness is on the stand. Do you want to take a few
24 minutes?

25 MR. DETERDING: Please.

1 COMMISSIONER JACOBS: Okay. We will come back
2 in ten minutes.

3 (Recess.)

4 (Transcript continues in sequence with
5 Volume 8.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
6 FPSC Commission Reporter, do hereby certify that the
7 Hearing in Docket No. 991643-SU was heard by the Florida
8 Public Service Commission at the time and place herein
9 stated.

7

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 201 pages, Volume 7 constitutes a
12 true transcription of my notes of said proceedings and the
13 and the insertion of the prescribed prefiled testimony of
14 the witness(s).

11


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

14

15 DATED THIS 8TH DAY OF NOVEMBER, 2000.

15

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17 
18 JANE FAUROT, RPR
19 FPSC Division of Records & Reporting
20 Chief, Bureau of Reporting
21 (850) 413-6732

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