

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 070641-WS

COMPLAINT BY WARREN DUNPHY, ON BEHALF  
OF REALM MANAGEMENT, LLC REGARDING  
REQUIRED INSTALLATION OF A REUSE LINE  
BY ALOHA UTILITIES, INC



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 7

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

DATE: Tuesday, March 4, 2008

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

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1 PARTICIPATING:

2 F. MARSHALL DETERDING, ESQUIRE, Aloha Utilities, Inc.

3 FLOYD R. SELF, ESQUIRE, representing Warren Dunphy.

4 CLIFF MAYHALL, ESQUIRE, representing David M.

5 Baccari.

6 KATHERINE FLEMING, ESQUIRE, JARED DEASON, and BART

7 FLETCHER, representing the Florida Public Service Commission

8 Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN CARTER: We are back on the record with  
3 our agenda. And we are ready for Item 7.

4 Staff, you're recognized.

5 MR. DEASON: Thank you.

6 Commissioners, I'm Jared Deason with Commission  
7 staff. Item 7 concerns a complaint by Realm Management,  
8 LLC against Aloha Utilities, Incorporated. Realm has been  
9 developing a restaurant and medical offices in Aloha's  
10 Seven Springs service area. Realm alleges that Aloha  
11 refused to provide water and wastewater service unless  
12 Realm executed a refundable advance agreement to install a  
13 reuse water line and obtain a \$300,000 letter of credit.

14 Realm signed the agreement and obtained the  
15 letter of credit in order to receive the necessary water  
16 and wastewater service for its business. After reviewing  
17 the various circumstances surrounding Realm's complaint,  
18 staff believes that it is not just, reasonable, nor  
19 economically feasible for Realm to construct the reuse  
20 line. Therefore, staff believes that Realm should not be  
21 required to construct the reuse line, and as a matter of  
22 fairness, if the Commission approves staff's  
23 recommendation, the utility should release the \$300,000  
24 letter of credit.

25 In addition, staff has a modification to Issue

1 Number 2, and I'll refer to legal staff for that.

2 CHAIRMAN CARTER: You are recognized, the  
3 modification for Issue 2.

4 MS. FLEMING: Commissioners, Issue 2 is a  
5 close-the-docket issue. It currently reads that the  
6 docket should not be closed. However, staff would like to  
7 modify this recommendation statement to read, "Yes," and  
8 use the standard PAA language, which is, "If no person  
9 whose substantial interests are affected by the proposed  
10 agency action files a protest within 21 days of the order,  
11 the docket should be closed upon the issuance of a  
12 consummating order."

13 CHAIRMAN CARTER: Commissioners, comfortable  
14 with that staff modification of Issue 2?

15 Commissioner Edgar, you're recognized.

16 COMMISSIONER EDGAR: Thank you, Mr. Chairman.  
17 Bear with me.

18 CHAIRMAN CARTER: I should have said staff's  
19 recommendation of the modification.

20 COMMISSIONER EDGAR: That's fine.

21 CHAIRMAN CARTER: You're recognized.

22 COMMISSIONER EDGAR: I would just like a little  
23 explanation, if that's all right.

24 CHAIRMAN CARTER: You're recognized.

25 MS. FLEMING: Sure, Commissioner.



1                   Currently -- or the previously worded  
2 close-the-docket issue was keeping the docket open for  
3 verification that the \$300,000 letter of credit has been  
4 released. Upon further review, it's unclear whether the  
5 Commission has jurisdiction over the \$300,000 letter of  
6 credit to require Aloha to release this. However, we  
7 believe that the \$300,000 letter of credit deals with a  
8 private agreement; it's a contract matter that could be  
9 addressed in a separate forum.

10                   There is a pending temporary injunction that  
11 relates to the \$300,000 letter of credit, so we feel that  
12 this could be more appropriately addressed in that venue.  
13 To that end, that is why staff's recommendation, part of  
14 staff's recommendation in Issue 1 states that as a matter  
15 of fairness, if the Commission approves staff's  
16 recommendation on Issue 1, the \$300,000 letter of credit  
17 should be released.

18                   CHAIRMAN CARTER: Thank you, Commissioner Edgar.  
19 Commissioners? I see we have the parties before us.  
20 We'll give you five minutes each side. Who wants to be  
21 first?

22                   MR. DETERDING: Commissioner, I apologize, but  
23 this is going to take us more than five minutes. There  
24 are extensive issues and repercussions from the staff  
25 recommendation that go not just beyond reuse, they go to

1 water and wastewater extensions of service, 40 years of  
2 service availability policy, and they also go to the  
3 industry in general. So I would beg your indulgence to  
4 allow us a little more time than that, because there are  
5 some issues that really need to be addressed.

6 CHAIRMAN CARTER: Commissioners, rather than --  
7 our standard time is five minutes. And before going  
8 beyond that or violating that, I would like to hear from  
9 my colleagues.

10 COMMISSIONER EDGAR: Mr. Chairman, just a  
11 suggestion. I think five minutes a side to start us, and  
12 then if there are questions, I would certainly think that,  
13 you know, if Commissioners have questions of either party,  
14 that perhaps we could give them leave to answer.

15 CHAIRMAN CARTER: Because you're going to use  
16 five minutes to basically introduce. We're going to ask  
17 you questions and all like that. I'm less likely to go  
18 beyond the five minutes. So you've got five minutes each  
19 side, so introduce your issue, and if Commissioners have  
20 questions, we will ask you the questions, and we will have  
21 questions of staff.

22 You're recognized. Five minutes.

23 MR. DETERDING: It's their complaint, I would  
24 prefer to go after. Thank you.

25 MR. SELF: That's fine, Mr. Chairman.

1                   CHAIRMAN CARTER:  You've got five minutes.

2                   MR. SELF:  Thank you very much, Commissioners.

3  I'm Floyd Self of the Messer Caparello & Self law firm.

4  I'm appearing today on behalf of Mr. Warren Dunphy.  With

5  me on my right is Mr. Dunphy and next to him is Cliff

6  Mayhall, who is an attorney for Mr. Baccari, who is the

7  guarantor under the letter of credit.

8                   I just have a couple of brief comments.  We

9  support the staff recommendation.  It is incredibly

10 thorough, accurate, and complete, and I think really does

11 a fantastic job of laying out all of the different issues

12 and the arguments and certainly comes to the right

13 conclusion.

14                   I'd like to just very quickly emphasize

15 three points here.  First, this development is 1.7 acres.

16 It's a restaurant, two small buildings, and a parking lot.

17 This is not Southwood, this is not the Koger Center, this

18 is not some major Wal-Mart shopping plaza.  This is less

19 than two acres.  Mr. Dunphy is a customer, and no customer

20 should be required under any stretch of the Commission's

21 rules and regulations to have to pay \$300,000 for a water

22 reuse line.  Not a sewer line, not a water line, but a

23 water reuse line for which his pro rata share in the most

24 favorable of circumstances is less than \$15,000.  If that

25 is not unconscionable and violative of the Commission's

1 rules, I don't know what is.

2           Secondly, there's an implication in the  
3 documentation from Aloha that Mr. Dunphy voluntarily  
4 entered into this process and that now somehow he is  
5 violating his contractual obligations. Nothing can be  
6 further from the truth. This was a hold up from the  
7 beginning. This was you do not get water and sewer  
8 service from us, Aloha, a regulated utility, unless and  
9 until you pony up ultimately \$300,000 to pay for this  
10 water reuse line that, as the staff analysis so well  
11 points out, is basically never going to get used.

12           We are all for reuse, and we support reuse, and  
13 if there had been a reuse line running down the street in  
14 front of this piece of property, we would have tapped in,  
15 paid our fair share, and this situation wouldn't exist.  
16 We are here because we are being asked to foot the bill  
17 for \$300,000 for a developer's agreement, for a refundable  
18 advance agreement, and ultimately a letter of credit that  
19 is, as I learned in law school, if ever there was a  
20 contract of adhesion, this is it. As a matter of law,  
21 this contract, the circumstances that led to Mr. Dunphy  
22 executing these documents was unconscionable and should be  
23 unenforceable.

24           Finally, and this also goes to the  
25 unenforceability issue, there is no authority here that

1 requires Mr. Dunphy in these facts and circumstances to be  
2 ponying up \$300,000 for this line. There's nothing -- DEP  
3 is not standing here saying we must have this. They need  
4 to be building this, this customer needs to be paying  
5 that. SWFWMD is not here, and there is nothing in your  
6 rules, orders, statutes, or their tariffs or service  
7 availability policy that requires this.

8           If you look through the tariff and the service  
9 availability policy there is one page that has a rate, a  
10 reuse rate, but there are no ordered requirements that  
11 under these facts and circumstances would require Mr.  
12 Dunphy to be footing the bill for this line.

13           We recommend strongly that you approve the staff  
14 recommendation and find that there is no authority for  
15 this requirement. And we ask that you order Aloha to  
16 cancel the service availability policy -- not the service  
17 availability policy, but cancel the developer's agreement,  
18 the advance refundable agreement, and order Aloha to  
19 release the letter of credit.

20           And if I could just for a brief moment let Mr.  
21 Mayhall who represents Mr. Baccari who is the guarantor --

22           CHAIRMAN CARTER: You've got one minute.

23           MR. SELF: -- speak to that issue.

24           MR. MAYHALL: Yes, Commissioners. Thank you.

25           What we would like is some sort of --

1 MR. DETERDING: Commissioners, I apologize.  
2 This is not even a party to this proceeding. I don't know  
3 who this is, but he's not a party to this proceeding.

4 MR. COOKE: Commissioners, this is PAA, and  
5 interested persons can speak.

6 CHAIRMAN CARTER: You have one minute. You're  
7 recognized.

8 MR. MAYHALL: Thank you, Commissioners.

9 All that we would like to see is some  
10 clarification in there that Aloha did not have the  
11 authority to require the letter of credit so that this  
12 enables us to go back to the circuit court and extend the  
13 temporary injunction that we currently have so that we can  
14 maintain the status quo and prevent a draw upon the letter  
15 of credit during any protest period or during any appeals  
16 period until there is a final order that is nonappealable  
17 from the Commission.

18 Thank you.

19 CHAIRMAN CARTER: Thank you.

20 You're recognized; you have five minutes.

21 MR. DETERDING: Commissioners, before I begin, I  
22 would like to have something handed out that shows a map  
23 and a couple of photographs just for you to be able to  
24 understand the context of this case. (Pause.)

25 CHAIRMAN CARTER: You're recognized.

1 MR. DETERDING: Thank you, Commissioner.

2 F. Marshall Deterding of the Rose Sundstrom  
3 Bentley law firm here on behalf of Aloha Utilities. This  
4 case involves a requirement for extension of service to  
5 serve a commercial piece of property. It is no different  
6 than every other case that this company has been involved  
7 in until we got to the point of a complaint being filed  
8 ten months after they entered into agreements. There was  
9 nothing in the interim suggesting that they felt this was  
10 some contract of adhesion, much less a complaint to the  
11 Public Service Commission. So I just wanted to correct  
12 that little statement.

13 This was entered into in May of 2006. It is not  
14 a request for a developer to build a whole line that  
15 serves a bunch of other people. As you can see, the  
16 Wal-Mart property in blue and the subject property in  
17 purple, it is a demand that they extend the line from the  
18 next door property to their property. Now, we requested  
19 that they oversize that line so that it can serve up to  
20 the green parcel at the top, which is just before the  
21 river and, therefore, the terminus of this reuse line.

22 We agreed to enter into a refundable advance  
23 agreement so that they would not have to fund the cost of  
24 the oversizing. But this company has for 40 years had a  
25 service availability policy that requires developers to

1 extend lines to their properties. If we cannot do this  
2 with reuse, then we cannot have a reuse system. If we  
3 cannot have a reuse system, we cannot provide sewer  
4 service. So Mr. Porter here is the professional engineer  
5 who represents Aloha, and I want him to briefly address so  
6 you have a better understanding of how a reuse system  
7 works in this circumstance.

8 CHAIRMAN CARTER: You're recognized.

9 MR. PORTER: Good afternoon, Commissioners, and  
10 thank you for allowing me to address you this morning --  
11 or this afternoon. What I would like to do for you very  
12 briefly is to just make two or three points. Number one,  
13 the reuse system that we are talking about is actually a  
14 method of effluent disposal. That is probably the most  
15 important point that you can take away from what I tell  
16 this you morning. Effluent disposal is an integral part  
17 of providing water and sewer service. You provide water  
18 to customers; they, in turn, send back sewage; and then  
19 someone has to take care of disposal of that treated  
20 sewage. That's a part of the process. There are three  
21 legs to this stool, not two.

22 To suggest that the third leg is somehow  
23 irrelevant or minor in importance is just ludicrous. I  
24 have heard quite a bit of speech here about how small this  
25 property is and how inconsequential it is. Well, that may



1 or may not be true. Because if you look at even the  
2 lowest estimate for how much reuse water would be taken by  
3 this customer, it is 2,300 gallons a day. It may not  
4 sound like a lot until you realize that that's  
5 800,000-plus gallons a year. That's a lot of reuse and a  
6 lot of effluent disposal. If they don't take it back,  
7 like every other customer does, then someone else is going  
8 to have to take it and pay for it, and it will be the  
9 customers of Aloha Utilities. So whoever gives us sewage  
10 must take back their effluent, must, because if they do  
11 not someone else will have to find another way to take it  
12 and to pay for it.

13           If you use the higher estimates, the ones  
14 provided by their own engineer, which was 3,453 gallons a  
15 day, that's 1.2 million gallons a year. That's a lot of  
16 effluent to dispose of. If you look at -- you know, if  
17 this one issue stops all the rest of these properties that  
18 you see here from eventually connecting on, which has been  
19 the way Aloha has conducted its business, the next guy  
20 picks it up and then from there on, if this stops  
21 everybody from going ahead, we are looking at a  
22 conservative 17 million gallons a year of reuse water that  
23 won't get disposed of by this property. Or as much as  
24 34 million gallons if you look at two inches per week,  
25 which is probably more reasonable.

1           So the impact of this, if it stops this line  
2 from ever being built ultimately, could amount to quite a  
3 lot of reuse water not being disposed of. And the  
4 disposal is what is the key issue here. I guess that's as  
5 far as I can go in my minute.

6           MR. DETERDING: You have time limitations.

7           MR. PORTER: There are many more issues.

8           CHAIRMAN CARTER: You've got another minute  
9 left.

10          MR. DETERDING: Well, and I want to use that  
11 minute --

12          CHAIRMAN CARTER: You got it.

13          MR. DETERDING: -- Your Honor. As I said, there  
14 are innumerable issues, some of them have been outlined in  
15 the staff recommendation, but one that I think you need to  
16 understand is if this person doesn't take reuse, if the  
17 one up the line doesn't take reuse, where are they going  
18 to get that water? They're going to irrigate their  
19 property with potable water. That is four-dollar-a-gallon  
20 county water, because Aloha has reached the limits of its  
21 water use permit. So that four-dollar-a-gallon will not  
22 go to them in the form of four dollars a gallon, it will  
23 go to the general body of ratepayers. Admittedly they  
24 will pay part of it because they will be paying potable  
25 water rates. But as you increase the four-dollar-a-gallon

1 water, all rates go up for potable water. So all  
2 customers are paying not only for disposal of their  
3 effluent, they are paying for their requiring us to take  
4 more four-dollar-a-gallon water from Pasco County.

5 Now, another issue that is dear to my heart is  
6 the fact that we will have no idea how to treat every  
7 single developer who comes in in the future. What are we  
8 going to tell them when they say, "We will not build that  
9 reuse line. We read that case involving Dunphy and the  
10 Realm property, and we don't think you can make us, even  
11 though we are right next door to where your existing line  
12 is." And they will go to the staff and say, "They want us  
13 to oversize it to serve down the road. They want us to  
14 put in a 12-inch line instead of a two-inch line." We  
15 won't know what to tell them. We will end up probable  
16 telling them the same thing we have told these people,  
17 that it is a 40-year policy of this company to require an  
18 extension from next door, and that if you don't do it, no  
19 one will do it.

20 And we will end up in a situation where we will  
21 be back here on a regular basis on these exact same issues  
22 until we get some determination of when it is appropriate  
23 to do what we have been doing for 40 years, and to my  
24 knowledge what every utility does that requires the  
25 contribution of lines. They require the guy next door to

1 extend the line. If it's oversized, we'll enter into a  
2 refundable advance.

3 CHAIRMAN CARTER: Thank you very much.

4 Commissioners, we have heard from the parties.

5 Staff, just kind of get us set-up here so we can  
6 kind of tee this issue up, and at that point in time  
7 Commissioners may have some questions. And, obviously,  
8 Commissioners, if you want to ask staff or the parties any  
9 questions, feel free to do so.

10 Staff, you're recognized.

11 MR. FLETCHER: Commissioners, I just wanted to  
12 point out one of the points that was raised by the utility  
13 regarding their service availability policy. This company  
14 has been in operation for decades, over four decades.  
15 And, initially, it was approved, their service  
16 availability policy. The last one I see is in 1981, and  
17 it envisioned there was only water and wastewater service.  
18 The company did not provide reuse at that time, they only  
19 provided -- in 1995 they came in for a docket to approve  
20 their reuse plan.

21 So what it speaks of now when it was originally  
22 approved by this Commission for the service availability  
23 policy, it was for the provision of water and wastewater  
24 service. I wanted to make that point there.

25 And then there was another -- let's see, with

1 regards to their residential, I wanted to make it a point  
2 that the utility's reuse system has matured based on their  
3 2006 inventory report issued by the DEP. They are  
4 virtually running out based on that report. The flows  
5 that the utility is reporting to DEP, you have a capacity  
6 of 1.68 million gallons per day, and they are using 1.67.  
7 You only have 10,000 gallons that are nonaccounted for in  
8 their reuse gallons that they have available to provide  
9 customers. Presently they have a few schools that they  
10 serve in Pasco County, and serve a couple of common areas  
11 of Pasco County, and then also a golf course. And, also,  
12 they serve presently about 1,800 customers based on the  
13 2006 reuse inventory report.

14           And I might add in there that there is  
15 additional capacity that is reserved for the golf course  
16 that they are not utilizing at this point, and also for  
17 the school areas in Pasco County, and also they are not  
18 using the entire capacity that they have allotted for the  
19 residential reuse customers, as well.

20           CHAIRMAN CARTER: Thank you.

21           Commissioner Skop, you're recognized.

22           COMMISSIONER SKOP: Thank you, Chairman Carter.

23           I guess amongst other things, one of the things  
24 that concerns me, if I could draw the Commission's  
25 attention to Page 4, the staff recommendation, to the

1 point that staff just spoke to in terms of the oversizing  
2 of the pipe, the percentage of usage, and Aloha's refusal  
3 to extend the five-year refundable period which just,  
4 again, speaks I think to the arrogance of the utility in  
5 general.

6 But, like I say, I just wanted to clarify that  
7 that is the position of the parties. Because, again, I  
8 think Mr. Deterding spoke to the fact that -- or alleged  
9 that this is refundable, or what have you, but only on  
10 their terms. So if staff or the parties could comment on  
11 that, I would greatly appreciate it.

12 MR. DETERDING: I certainly can comment on that.

13 CHAIRMAN CARTER: You're recognized.

14 MR. DETERDING: Thank you.

15 The utility has for 40 years utilized refundable  
16 advance agreements on rare occasion when they were  
17 appropriate. This situation normally would involve a five  
18 or seven-year refundable advance period. That is  
19 certainly the norm within this industry. Now, is Aloha  
20 willing to go beyond that? Yes, if that's what will  
21 resolve this, yes, we are. But what we have been trying  
22 to do is remain consistent with what we have been doing  
23 all these years. So as to that question, that is our  
24 response.

25 I would like to, if I could, point your

1 attention to the photographs that I provided you  
2 concerning what the staff has said is a mature system.  
3 Those photographs, the first one behind the map is a  
4 photograph that shows you what the system looked like last  
5 summer. And then the last one is the same basic view  
6 showing what the system looked like last month. This  
7 variation has been at 12 to 14 feet, and we are only about  
8 a foot-and-a-half from topping out on our reuse ponds. We  
9 have no alternative than to distribute that reuse or be in  
10 violation of our DEP permit.

11 So to suggest that this is somehow a mature  
12 system and that therefore we don't need to require reuse  
13 anymore is not true. And, in fact, as we add more  
14 customers who aren't required to take reuse, the situation  
15 will only get worse.

16 CHAIRMAN CARTER: Thank you.

17 Commissioner Skop, you asked a question of both  
18 staff and the parties.

19 MR. DETERDING: I apologize.

20 CHAIRMAN CARTER: You're recognized.

21 COMMISSIONER SKOP: Yes. I just want to comment  
22 upon another statement that was just made as supporting  
23 justification as to why the reuse needs to be used. And  
24 looking at the photographs, again, perspective is  
25 everything when it comes to photographs. If you look at

1 the second photograph, obviously during last summer in a  
2 period of extensive drought in the state of Florida, and  
3 the person is well down on the bank by the reeds to his  
4 left. If you look at the second photograph which shows, I  
5 guess, maybe the current state of the pond, retention  
6 pond, if you notice the location of the reed, and if you  
7 notice the location of the banking incline, I mean,  
8 certainly that difference in elevation to me seems far  
9 greater than 1.5 feet, so I would like an explanation to  
10 that.

11 MR. PORTER: May I?

12 CHAIRMAN CARTER: You're recognized.

13 MR. PORTER: Thank you.

14 I think it's very important to look at those two  
15 photos, because they show you a continuum of how the wet  
16 weather storage facilities for a properly operated reuse  
17 system function. During the driest time of the year, when  
18 people take the most reuse water, you essentially draw  
19 down your wet weather storage ponds, which you see in the  
20 first picture. So they are drawn down during the time of  
21 the year when people use the most water. During the times  
22 of the year when it is wettest or they don't use as much  
23 water because there is not as much of a demand, then the  
24 ponds fill. So you've got a fill and draw cycle that  
25 occurs every year.



1           Now, I think what you just said was very  
2 important. It was a very deep drought in the last three  
3 or four years. And while I will tell you that that is  
4 indicative of what you see here, it is very important to  
5 ask the other question, which is not how do you get rid of  
6 it during a drought, but what do you do when you've got  
7 two or three wet years. You see, that's when it matters.

8           When you have a drought condition, it's not too  
9 hard to get rid of reuse water. Where you run into  
10 trouble and where you run into problems is what happens  
11 when you have three or four wet years. Now, I will say  
12 this. In this picture that you see here, if you see the  
13 man standing there, there's a good seven or eight feet of  
14 difference between where he is standing, maybe ten feet to  
15 the top of the lighter area, the sand beachy area. That  
16 sand beachy area that you see there is essentially the  
17 same place that you see this green area floating. That is  
18 actually floating material that's there, so that is not  
19 the extension of the bank.

20           If you look at the edge, you can see where the  
21 edge of the bank is. So the edge of the bank there, or  
22 the upper bank is essentially the point at which, if you  
23 see the automobile in that first picture, it is down four  
24 or five feet from where the automobile is. So there is a  
25 big difference between the two.

1           Now, we are at that point of the year where the  
2 pond should be relatively full. But it has been a little  
3 wetter than normal, so they are even higher than they  
4 normally would be, and it is a concern to us right now,  
5 because Aloha has nowhere else to put this water. We have  
6 nothing else but reuse. That's it, that's our only  
7 disposal method.

8           CHAIRMAN CARTER: Commissioner Skop.

9           COMMISSIONER SKOP: Thank you, Mr. Chairman.  
10 And, again, as a follow-up. I don't mean to spar, but the  
11 interconnection in question is going to reduce the volume  
12 of this pond by what amount? Because staff has stated  
13 they have nothing to irrigate. So to me, and to that  
14 point, also, we talk about rainfall and drought  
15 conditions. Wouldn't it be prudent, and, again, as a  
16 fellow engineer I think we will both understand this, to  
17 size the pond appropriately for expected rainfalls in the  
18 state of Florida?

19           MR. PORTER: And they were, initially, as  
20 directed by DEP at the time, and they have functioned  
21 flawlessly for the last 10 years, 15 years. The thing to  
22 keep in mind is that is because during that entire period  
23 whenever someone signed up for service, water and sewer  
24 service, they also took back their reuse water. I mean,  
25 that's the premise as to how the system is going to work.

1           Now, while I will grant you that Mr. Dunphy's  
2 quantity appears to be a small amount, even at  
3 2,300 gallons a minute (sic), over a period of a year that  
4 is 843,000 gallons. That's quite a lot of water to get  
5 rid of. If Mr. Dunphy doesn't take it back, then where  
6 are we going to put it? It has got to go somewhere.  
7 Right now someone is out there taking reuse water. How  
8 are we going to give them more? You see. And it's not  
9 only Mr. Dunphy we have got to be concerned about, it's  
10 also everyone else on that line. If you look at everyone  
11 that is in there in addition to Mr. Dunphy, because he is  
12 the next step in the process, he is the next leg, you're  
13 looking at a potential amount between 17 and  
14 34 million gallons that may never go out there.

15           MR. DETERDING: And, Commissioner, I want to  
16 clarify something that you may misunderstand. The subject  
17 of this discussion is a line that runs from the Wal-Mart  
18 property to the purple property. It is not the remaining  
19 line that runs up to the green property at the terminus of  
20 the line. We are only talking about the portion that runs  
21 from his next door neighbor to his property.

22           MR. PORTER: But he's integral. Because once he  
23 connects on, then the very next person will do the same.  
24 They will connect from their property to him. So it's  
25 like a leapfrog kind of thing. One guy does it, the next

1 guy does it in sequence. But when one guy drops out, or  
2 opts out, how do the rest ever connect in?

3 CHAIRMAN CARTER: Commissioner Skop.

4 COMMISSIONER SKOP: Thank you, Mr. Chair.

5 I guess, based on customer complaints I have  
6 heard, I was going to make a parallel between the quality  
7 of the water and their retention pond, but I guess if you  
8 can't say anything nice you shouldn't say anything at all,  
9 so I probably won't go there.

10 CHAIRMAN CARTER: Commissioner, you asked a  
11 question of staff, as well. Did you get your question  
12 answered by staff?

13 COMMISSIONER SKOP: If staff can opine with  
14 respect to the refusal to extend the refund period again.  
15 Because around every corner there is constant posturing  
16 from this utility. Again, I respect zealous advocacy, but  
17 it goes well beyond that, so I just wanted to hear from  
18 staff in relation to my concern.

19 MR. FLETCHER: Yes. There was a meeting back in  
20 December of '07, a meeting with all the parties in which  
21 that question was posed to Aloha whether they would be  
22 willing to extend the refundable advance agreement. They  
23 were not willing to do so at that meeting. There was a  
24 discussion there, it was asked, and they can do so. All  
25 it would require, if they were willing to, is just to file

1 a tariff modification to extend the refundable advance  
2 agreement term of five years to ten or whatever the case  
3 may be. At that time they did not -- were not willing to  
4 extend it at that time.

5 MR. DETERDING: Commissioner, I apologize -- Mr.  
6 Fletcher was not at that meeting. I was at that meeting,  
7 Mr. Porter was at that meeting, and Mr. Watford was at  
8 that meeting. No one asked us to extend the refundable  
9 advance period. Our refundable advance period is per our  
10 service availability policy. If we had been asked, we  
11 would have said if that will resolve this issue, we are  
12 willing to do so. So I just want to clarify. That is not  
13 correct; we did not refuse to extend the refundable  
14 advance period.

15 CHAIRMAN CARTER: Are you saying that is what  
16 you would do now? Is that what you're saying?

17 MR. DETERDING: Yes, sir.

18 CHAIRMAN CARTER: Commissioner Skop, you had a  
19 line of questions that --

20 COMMISSIONER SKOP: I think I made some of my  
21 points. I think Commissioner Argenziano or staff -- she  
22 is pointing to staff, so I think --

23 CHAIRMAN CARTER: Commissioner Argenziano.

24 COMMISSIONER ARGENZIANO: Staff.

25 CHAIRMAN CARTER: Staff, you're recognized.

1 MS. FLEMING: I just wanted to respond to Mr.  
2 Deterding's comment. I actually asked Mr. Deterding  
3 during that conference call whether Aloha was willing to  
4 extend its refundable advance agreement beyond a five-year  
5 period. We also suggested that maybe this is a complaint  
6 that could be mediated, and none of the parties were  
7 willing to do so at that time.

8 CHAIRMAN CARTER: And his answers?

9 MS. FLEMING: Aloha at the time was not willing  
10 to extend its refundable advance agreement by modifying  
11 its tariff.

12 MR. DETERDING: Well --

13 MR. SELF: Mr. Chairman.

14 CHAIRMAN CARTER: Mr. Self.

15 MR. SELF: Thank you, sir.

16 I think what is particularly telling about this  
17 is based upon the staff's analysis, and assuming I can run  
18 a calculator, 70 percent of the potential customers that  
19 this line is being designed for, based upon the staff's  
20 analysis, are never going to take the service. So  
21 extending the refundable advance agreement to 10 years to  
22 15 years, I mean, I'm sure some day this property will get  
23 developed, but the fundamental issue is is it appropriate  
24 for Mr. Dunphy to front \$300,000 up front that, yes, maybe  
25 in five, maybe in ten, maybe in twenty years he gets back.

1 His cut of this is \$15,000. If they want to build the  
2 line, we are more than happy to pay our fair share, the  
3 15,000. It's not even 15,000.

4 MR. DETERDING: Well, that's not true.

5 CHAIRMAN CARTER: Wait, Mr. Deterding. I would  
6 expect you to respect this tribunal.

7 MR. DETERDING: I apologize. I will. I  
8 apologize, Commissioner.

9 CHAIRMAN CARTER: Otherwise we will turn your  
10 mike off.

11 MR. DETERDING: Yes, sir.

12 CHAIRMAN CARTER: And ask you to leave the  
13 premises, sir.

14 Commissioners, let's take five minutes. We're  
15 on recess.

16 (Recess.)

17 CHAIRMAN CARTER: We are back on the record.

18 Commissioner Argenziano, you're recognized.

19 COMMISSIONER ARGENZIANO: Yes. I can't help but  
20 ask this question, and it's going to be, I guess, to  
21 Aloha.

22 If you turn to Page 8 of the staff analysis  
23 where it says service availability -- now, I'm doing it,  
24 availability policy, hydraulic share, "Although Aloha  
25 states that not requiring Realm to construct the reuse

1 line violates its service availability policy, Aloha has  
2 made certain exceptions for other current customers.  
3 These exceptions include Chang Medical Center and Seven  
4 Springs Medical Park. Both properties are adjacent to  
5 Realm and are required to connect to the reuse line." If  
6 you made these exemptions before, which it sounded to me  
7 like you have never done that before, and if you have made  
8 these exemptions before, why not have the exemption now to  
9 this small property that uses a very tiny percentage? And  
10 if in the future the adjoining developments take place,  
11 then they can pay their fair share.

12 MR. DETERDING: Commissioner, a couple of  
13 things. First of all, the properties that are mentioned  
14 as being other properties, the Chang Medical Center and  
15 the Seven Springs Medical Park, if you will look at the  
16 green dot at the top of the map, that is the Chang Medical  
17 Center. The remaining parcels that are shown on the  
18 cul-de-sac to the left, to the west of the Chang Medical  
19 Center are the second phase of the Chang Medical Center,  
20 which is called Seven Springs Medical Park.

21 Those facilities are four times the distance  
22 from the current interconnection point at the Wal-Mart as  
23 the petitioner here. So if we made this person construct  
24 that line, they would be required to build a million  
25 dollar reuse line, and then they would be responsible for



1 getting a refundable advance if they built a million  
2 dollar -- that is why in the history of this company they  
3 have required the adjacent property to put in the line.

4           The oversizing is the only issue that is subject  
5 to the refundable advance. If we made Dunphy put in a  
6 line simply to extend a two-inch line so it would provide  
7 service only to them, to their property, it would cost  
8 like 9/10ths or more of the cost of what we are proposing  
9 that they put in simply to allow it to be extended up  
10 there. So these are the properties that they are talking  
11 about. These are the properties that they have referred  
12 to as being cases where we have not required it. Well, we  
13 have not required it, because if you think this is  
14 unreasonable, that is absurdly unreasonable.

15           We have to -- somebody has to pay for these  
16 lines. If this person does not, as has been the history  
17 of this company, then the general body of ratepayers is  
18 going to have to do so.

19           CHAIRMAN CARTER: You're recognized,  
20 Commissioner.

21           COMMISSIONER ARGENZIANO: I understand distance  
22 costs more. I think it's unreasonable that he is right  
23 across the street from the line and it is going to cost  
24 him \$300,000, to be honest with you. But if you have an  
25 exception, whether they are done there or over here, I

1 don't see how that, you know, if you want to have this  
2 Chang Medical Center or Seven Springs Medical Center over  
3 here, and your requirement is you have got to hook up no  
4 matter what, because how do you get rid of this water, I  
5 don't understand how they are exempted and --

6 MR. DETERDING: They're not.

7 CHAIRMAN CARTER: Let the Commissioner finish  
8 her questions.

9 MR. DETERDING: In fact, their developer  
10 agreement they entered into in 1998, and the additional  
11 one entered into with the Seven Springs Medical Park in  
12 2005 require that when the line is there, they must  
13 connect in and pay their hydraulic share.

14 CHAIRMAN CARTER: You're recognized,  
15 Commissioner.

16 COMMISSIONER ARGENZIANO: If the property next  
17 door, as you say, will develop and then pay back Realm for  
18 their expenses now, then why not look at it just the  
19 opposite way. I'm trying to figure this out. Well, if it  
20 develops, then they can tie in and pay their appropriate  
21 share.

22 MR. DETERDING: But somebody has to construct  
23 the line. And the utility has currently no investment in  
24 water, wastewater, or reuse lines with the exception of  
25 the backbone reuse line that they paid for half of and the

1 water management district paid for the other half. That  
2 is how they have been able to keep their rates to a  
3 relatively low level is by requiring the contribution of  
4 facilities, of distribution and collection facilities by  
5 developers.

6 COMMISSIONER ARGENZIANO: Let me ask you just  
7 one more.

8 CHAIRMAN CARTER: You're recognized.

9 COMMISSIONER ARGENZIANO: And the Chang Medical  
10 Center had been excepted from the reuse line?

11 MR. DETERDING: No.

12 COMMISSIONER ARGENZIANO: What are they doing  
13 now?

14 CHAIRMAN CARTER: Their contract specifically  
15 says that once the reuse line is there they must tie in  
16 and they must pay their hydraulic share for that extension  
17 of that line.

18 COMMISSIONER ARGENZIANO: Once it is there.  
19 There's a big difference in once it's there than you put  
20 it in. That is what I'm trying to get at. And I  
21 understand that it is going to cost them more up there,  
22 because they are farther away, but --

23 MR. DETERDING: Commissioner, I don't know how  
24 you would ever get a line built if you are going to  
25 require the contribution of lines unless you at least get

1 the person immediately adjacent to the existing location  
2 of the line to pay for the extension of that line.

3 COMMISSIONER ARGENZIANO: I don't know how --  
4 with all due respect, this is the thing I'm really -- the  
5 word tussling, I'm tussling with, is that if I'm a small  
6 business and I have a small entity going up there, I don't  
7 know how anybody could afford to do that. Because  
8 \$300,000 is just unreasonable for a small entity to be  
9 able to do that.

10 Now, if that's the problem, then I'm not sure  
11 what the answer is, but I don't see how -- I don't see how  
12 you can do that. I don't see how it will ever work,  
13 because then you would never have a line.

14 MR. DETERDING: Well, I mean, it costs money to  
15 extend water and wastewater and reuse lines. And reuse in  
16 and of itself does not pay for itself through reuse rates.  
17 It is only as a method of effluent disposal and it has to  
18 be there. As far as the \$300,000, they made an estimate  
19 when this thing was originally entered into two years ago  
20 of approximately 80 to \$90,000 informally. They then had  
21 at the time of their complaint, or somewhere close to  
22 their complaint estimated 177. The letter of credit was  
23 required at 300 in order to protect the utility and its  
24 ratepayers while this complaint was pending.

25 Normally a utility does not connect, does not

1 allow the DEP -- sign off on the DEP permits until all  
2 contributions are made, all extensions that are required  
3 are made and dedicated to the utility. In this case, as  
4 an accommodation to this customer and to the Commission  
5 staff's request that we move forward with giving them  
6 water and wastewater service, when they had not in the ten  
7 months that intervened between the date they signed the  
8 agreement and the date they were demanding service, had  
9 done nothing towards constructing the reuse line and had  
10 said nothing to us about not constructing the reuse line.

11 When they filed the complaint, they demanded  
12 service right then and there. We worked out an  
13 arrangement to require a letter of credit to make sure we  
14 covered all the costs related to whatever that reuse line  
15 might cost. So \$300,000 is a bit of a misnomer. I just  
16 wanted to clarify that for you.

17 MR. SELF: Unless you're putting up the money.

18 CHAIRMAN CARTER: One second here. One second  
19 here.

20 Commissioner Argenziano, are you complete?

21 COMMISSIONER ARGENZIANO: At the moment, yes.

22 CHAIRMAN CARTER: We'll go to Commissioner  
23 McMurrian. You're recognized, Commissioner.

24 COMMISSIONER McMURRIAN: Thank you, Chairman.

25 I just want to follow up on the point that

1 Commissioner Argenziano was making, and actually Mr.  
2 Deterding was getting into this. I was wondering what was  
3 lacking in that independent contractor's proposal of  
4 177,000. Why was that not considered adequate? Why did  
5 you need -- I understand what you said, about 300,000 to  
6 protect the utility, but --

7 MR. DETERDING: Our engineer said there were  
8 several things missing, the most blatant of which was that  
9 there was no provision for an easement to be acquired from  
10 Wal-Mart in order to run the line. We just wanted to  
11 be -- in an abundance of caution, make sure that our  
12 customers and the utility were not left holding the bag if  
13 the letter of credit was not sufficient to do whatever was  
14 necessary to put in that line.

15 If the line cost \$5,000, that's fine by us, we  
16 had nothing to gain. This is a contribution in aid of  
17 construction. It has no effect on our rates. We are just  
18 trying to make sure that the general body of ratepayers  
19 doesn't end up footing the bill for whatever it costs.

20 COMMISSIONER McMURRIAN: Thanks.

21 CHAIRMAN CARTER: Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Mr. Chair.

23 I think Commissioner Argenziano's questions, and  
24 then followed up by Commissioner McMurrian, I think,  
25 addressed the remaining question that I had. So I'm

1 thankful that that was brought forth, and I guess I'll  
2 yield to any additional questions.

3 COMMISSIONER ARGENZIANO: Mr. Chair.

4 CHAIRMAN CARTER: Commissioner Argenziano.

5 COMMISSIONER ARGENZIANO: I'm sitting here  
6 thinking, you know, if I'm the guy here in pink, purple,  
7 or whatever color that is, and I'm being told, well, okay,  
8 I need to put this line in, and this is how much I have to  
9 pay to do it, and the first thing that comes to mind I  
10 wonder why you agreed to that, and then I read a little  
11 bit more and it seems like maybe you had no choice but to  
12 have to agree with that. But if I'm being told that when  
13 this property in between the Chang Medical Center and the  
14 Realm property gets developed then you get your money  
15 back. Well, I don't know what kind of a promise that is,  
16 and I don't know if that is in somebody's budget to wait  
17 20 years down the road. I don't know how it gets done.

18 MR. SELF: And, Commissioner, if I understand  
19 this correctly, it's even more contingent than that.  
20 Because as I understand it, the current line, if you are  
21 looking at your little map, at the bottom left-hand  
22 corner, the existing line is across State Road 54. So  
23 part of what drives up the cost here, you know, the State  
24 DOT doesn't like you digging up their road. So you've got  
25 to bore under that. You have now got to get easements,

1 and whatnot, I guess, from Wal-Mart and/or the county.  
2 You have got to come up to Little Road, and then down  
3 Little Road to someplace in front of Mr. Dunphy's  
4 property.

5 Well, wherever that terminates there in the  
6 purple area, that doesn't get the pipe up to the rest of  
7 these people. And if I understand what I have heard here,  
8 these folks up here, Chang, doesn't have to hook on until  
9 the pipe is there. Well, the intervening properties  
10 aren't going to be developed, so the pipe never gets up  
11 there unless the utility or somebody else pays to bring it  
12 up there. So that just makes Mr. Dunphy's ability to  
13 recover something under a refundable agreement even less  
14 likely.

15 COMMISSIONER ARGENZIANO: If I may ask, if they  
16 were, and I'm going to say exempted, because that is what  
17 it seems like to be, if Chang Medical Center was exempted  
18 from hooking up, why does Mr. Dunphy have to hook up at  
19 this point?

20 MR. SELF: Well, my position, Commissioners, is  
21 there is nothing in their tariff that requires them to do  
22 that.

23 COMMISSIONER ARGENZIANO: Okay. Number one, if  
24 he's not require to hook up, and you can exempt out the  
25 medical center because it's money and all of this, why



1 would he have to hook up? Hang on, I want to hear your  
2 answer. Well, let's go with that one, and then I've got  
3 another one.

4 MR. DETERDING: Well, they certainly, in our  
5 book, are not exempted. They are required both to hook up  
6 and to fund their pro rata share not only of the extension  
7 to Dunphy's property that they would be responsible for,  
8 but also the cost of the other extensions that would be  
9 required to get to their property. So they would have to  
10 participate in all of that once the line gets up there.

11 COMMISSIONER ARGENZIANO: Mr. Chairman.

12 CHAIRMAN CARTER: You're recognized.

13 COMMISSIONER ARGENZIANO: Then getting back, and  
14 I understand -- I almost think I know your answer to this.  
15 So if they can wait until the line gets up there, why  
16 can't Mr. Dunphy wait until the adjoining property gets --  
17 or there is a promise of development. Why should he have  
18 to hook-up? And the other question is, I'll ask you now,  
19 and then if staff can answer this, too, is has a utility  
20 such as Aloha ever paid to put in a line like this? Do  
21 you ever do that?

22 MR. DETERDING: Part of the policy that this  
23 Commission has approved for this and many other utilities  
24 is that all transmission, collection, and distribution  
25 systems are contributed. And this company has that policy

1 and has for 40 years. That whenever there is a needed  
2 extension to serve a property, the utility has required  
3 that the developer contribute that. Sometimes it has been  
4 in front of some other properties. But in reuse,  
5 especially in light of the distance here, we did not  
6 require Chang to extend that line. In fact, when Chang  
7 first came in, the parcel that is green, there was no  
8 reuse line on the other side of State Road 54.

9           And I want to correct something else. There was  
10 a claim that they had to jack and bore under State Road  
11 54, or Little Road, which is also a major thoroughfare and  
12 four-lane road. The jack and bore was done by Wal-Mart.  
13 Wal-Mart paid for probably the most expensive part of this  
14 whole thing, which was to jack and bore from the other  
15 side of State Road 54 to the main line to service their  
16 property. And now what Dunphy is being asked to do is to  
17 take that jack and bore, which is the costly part, put a  
18 different line in there, a larger line so that it can  
19 serve both them and Wal-Mart, and then extend up to their  
20 property.

21           We also offered them the option of jacking and  
22 boring right at the corner of Little Road and 54, tapping  
23 into the line and going to their property, but the jack  
24 and bore is the expensive part. Since Wal-Mart has  
25 already done it, the cheaper thing to do would be to go --

1 they determined, would be to extend around Wal-Mart.

2 CHAIRMAN CARTER: Did you get an answer to your  
3 question about --

4 COMMISSIONER ARGENZIANO: No.

5 MR. DETERDING: I'm sorry, I thought I answered.

6 COMMISSIONER ARGENZIANO: I think you never pay  
7 for the lines. That's all contributed by the developer or  
8 the development that is in place.

9 MR. DETERDING: That's correct.

10 COMMISSIONER ARGENZIANO: And that is a problem,  
11 because if it is never done, how do you do it now? What  
12 is the answer to -- would it be on Aloha, or DEP, or  
13 somewhere else for this property not to have to tie in,  
14 just as the Chang Property didn't have to tie in?

15 MR. FLETCHER: In reviewing DEP's permits for  
16 Aloha and also their water management district permit,  
17 there is no requirement that reuse be required that you  
18 hook-up. It's encouraged, it's promoted, and even we have  
19 in 2003 the report that was based on a reuse nominating  
20 council, the water management districts, and DEP where it  
21 just says required, where it's encouraged not mandated in  
22 that report by the reuse nominating council.

23 And as far as other utilities, there has been  
24 one other one that I'm aware of where -- it was a  
25 Plantation Bay Utilities -- where they actually invested a

1 part in a reuse line. I worked on that case. It was a  
2 2005 case, and there was part investment by the utility,  
3 so it's not required in every case that it be donated.

4 CHAIRMAN CARTER: You're recognized.

5 COMMISSIONER ARGENZIANO: That's up to the  
6 utility, then, and then they can recover that through  
7 everyone who uses the facilities. So let me --

8 CHAIRMAN CARTER: You're recognized.

9 COMMISSIONER ARGENZIANO: Let me vet it out  
10 carefully, if I can. So there is no requirement by DEP,  
11 the requirement is by Aloha, and for obvious reasons. It  
12 gives you -- I guess it enriches your company somehow  
13 later on down the line if the development -- you have it  
14 there. But, again, why couldn't Aloha, since there's no  
15 mandate, state mandate by the Department of Environmental  
16 Protection, do the same thing. And if the development  
17 next door or the property adjacent is to develop later on,  
18 extend the same, I guess, agreement as you did with the  
19 Changs that then they would pay their fair share. I mean,  
20 what is your main goal right now for saying this is a  
21 mandate for this --

22 MR. DETERDING: Well, we disagree. And Mr.  
23 Porter can address that, if you would like us to, about  
24 whether or not this is required by DEP and the water  
25 management district.

1 MR. PORTER: If I may.

2 COMMISSIONER ARGENZIANO: Mr. Chair.

3 MR. PORTER: I think if you were to ask DEP is  
4 there a rule that says every single person who connects to  
5 your water and sewer system must also connect to your  
6 reuse system, the answer to that would be no, that's  
7 correct.

8 However, in Aloha's permits, and in its  
9 representations it made to obtain those permits from the  
10 Department of Environment Protection, let's start there,  
11 we retained the services of a groundwater hydrologist, a  
12 professional, who looked at -- in the last update,  
13 somewhere in the 2000 range -- looked at the remaining  
14 properties that were left to be developed in the Aloha  
15 service area. He then applied a rate at which he believed  
16 reuse water could be applied to those areas, and he  
17 included all areas that were left to be developed.

18 And then he, in turn, added that to the existing  
19 permitted capacity of the reuse system that Aloha has in  
20 its permit. The DEP reviewed that, they had their own  
21 groundwater hydrologist review that, they made the same  
22 due diligence they always do, and agreed with it and  
23 assessed a permitted capacity of the reuse system of  
24 3.089 million gallons per day. So that is made on a  
25 representation that these areas that the groundwater

1 hydrologist represented, all of the service area remaining  
2 to be constructed, would eventually someday have reuse on  
3 it. That is how we got to that 3.089.

4 Now, it's imperative that when you get a  
5 capacity for a wastewater plant, in the case of Aloha's  
6 system it is 2.1 million gallons a day, that you have  
7 essentially 1-1/2 times the capacity of the wastewater  
8 plant in the reuse system, which brings us to that number.  
9 So when DEP permitted that last upgrade to the wastewater  
10 treatment system to 2.1 million gallons a day, they took  
11 as good faith the representation that Aloha made as to  
12 what its capacity to dispose of effluent was through its  
13 reuse system. So they, in turn, said, okay, we will give  
14 you the permit. So that is their due diligence and how  
15 they arrived there.

16 So while I will agree with you that there is no  
17 rule that says you must go back to everyone that went,  
18 there is a rule that says you have got to show us where  
19 your capacity is, and that is how they arrived or we  
20 arrived at that capacity, and that is how DEP permitted  
21 the wastewater plant. That is the first --

22 CHAIRMAN CARTER: Commissioner Argenziano.

23 COMMISSIONER ARGENZIANO: But to that point,  
24 then that is your representations to DEP.

25 MR. PORTER: Correct.

1                   COMMISSIONER ARGENZIANO: So you actually need  
2 this hook-up to be in compliance with your  
3 representations.

4                   MR. PORTER: That's my opinion, yes.

5                   COMMISSIONER ARGENZIANO: Not the property  
6 owners.

7                   MR. PORTER: And I think the issue here is  
8 bigger than Realm, to be perfectly honest. It's that  
9 issue that troubles me, as the engineer who deals with  
10 permitting for Aloha the most, that is the one issue that  
11 troubles me the most. Because, as you can see, Realm is  
12 the next property that is contiguous to Wal-Mart. Chang  
13 was not contiguous. And it has been the policy in the  
14 past that the contiguous pieces are the ones that are  
15 asked to connect first and provide the lines to get to the  
16 remaining people.

17                   Now, down the road we fully expect to get to  
18 Chang, because Chang in its developer agreement has  
19 already agreed to connect. They have also placed their  
20 facilities on-site to be able to connect. So that was  
21 part of the agreement also. So they are ready to connect.  
22 Once this property connects, then the next person that  
23 comes along will be told to do the same thing, and the  
24 next, and the next, until we finally get there.

25                   Now this is one piece of property. There are

1 many of these all over the service area. Remember, we are  
2 at that point now where Aloha is getting close to being  
3 built out. Somewhere down the road that's going to  
4 happen. So there's a lot of little pieces for the reuse  
5 system now to be expanded into. A parcel there, a parcel  
6 there, three parcels along this road. But every one of  
7 those are parcels that go into making that capacity of  
8 3.089 million gallons a day for the reuse system. It also  
9 ultimately will determine whether that pond empties like  
10 it should every year, or runs into problems during part of  
11 the year, especially wet years, where we can't get rid of  
12 the effluent.

13           So while this may seem like a small issue one  
14 time, it's probably going to apply to many more down the  
15 road. And I think it's important that we maintain the  
16 position here that this is an effluent disposal system,  
17 and that anyone who provides wastewater need to make  
18 provisions to be able to take back their wastewater.

19           COMMISSIONER ARGENZIANO: Just one last  
20 question.

21           CHAIRMAN CARTER: Commissioner Argenziano, then  
22 Commissioner Skop.

23           COMMISSIONER ARGENZIANO: I could probably ask  
24 you many, many questions, but I'm going to ask you one  
25 last question. If for some reason you had a bunch of



1 little parcels in between here, and each one had to  
2 hook-up as they went along, but the price or the cost was  
3 expensive and they couldn't do it, how do you plan to meet  
4 your requirements that you gave to the DEP and the water  
5 management districts? Let's say they just say I throw up  
6 my hands, I can't do this.

7 MR. PORTER: I can address that. One would  
8 normally think that if I was a developer and I was going  
9 to develop a piece of property, the first thing I would  
10 ask in my due diligence, I would ask my engineer, "Go find  
11 out for me what my costs are going to be to develop this  
12 property." One of the issues that I would address is I  
13 would come to the utility and say, "What are my  
14 obligations? Before I decide whether this is a viable  
15 project or not, what are my obligations to complete this  
16 development?" As your engineer, I would say, "You're  
17 going to have to provide water, sewer lines, and reuse  
18 system." Then it is up to the developer to decide whether  
19 that's a viable project or not. And if it's not for him  
20 because of the type of development he is going to do, then  
21 it is up to him to decide whether he wants to build it or  
22 not. The same would be true with every parcel in here.

23 Now, if they don't build it and they don't use  
24 it and they don't generate wastewater, then we don't have  
25 a problem, because we will never reach that point in our

1 permit where we have got to have that reuse water. You  
2 see, it's a question of when you build it, they will come.  
3 You know, once it's built, the wastewater is going to go  
4 to the wastewater plant. If they never build it, it's  
5 never going to the wastewater plant. So the situation  
6 becomes a problem when they generate the wastewater, we  
7 have got to get rid of the reuse. And, like I said, this  
8 seems like a small amount, but even at the lowest  
9 estimate, that is 800,000 gallons a year of reuse water  
10 that has got to go somewhere.

11 COMMISSIONER ARGENZIANO: I'm sorry, half a --  
12 it's just a response.

13 CHAIRMAN CARTER: You have a half question?  
14 You're recognized.

15 COMMISSIONER ARGENZIANO: If I were the  
16 developer of the property and I asked those questions,  
17 "What are my costs," and there is no mandate to hook up to  
18 reuse, I wouldn't consider that.

19 MR. PORTER: No. But if you came to me, if I'm  
20 the utility and you have through your engineer -- because  
21 we do have people do that frequently that come in and sit  
22 down with the utility and say, "What is it going to take  
23 for me to get water and sewage to my system?" And they  
24 are told, "You are going to take reuse water." I mean,  
25 that's what happens. That is part of the --

1 MR. DETERDING: And if we can't do that, it  
2 makes it impossible to run the utility as permitted.

3 MR. PORTER: Right. I don't know how we would  
4 ever get rid of our effluent. I mean, if this was the  
5 test that was going to be used in the future from now on,  
6 there would be a problem.

7 CHAIRMAN CARTER: Let me do this, Commissioners.  
8 I will recognize Commissioner Skop, and I'm going to give  
9 the parties an opportunity to be heard, but right now we  
10 are in an opportunity for the Commissioners to ask  
11 questions, but we will give the parties an opportunity to  
12 be heard.

13 Commissioner Skop, you're recognized.

14 COMMISSIONER SKOP: Thank you, Chairman Carter.

15 I guess following along with Commissioner  
16 Argenziano's question, if I could refer everyone to Page  
17 7 of the staff recommendation, Paragraph 4(b), where it  
18 talks to the SWFWMD permit. It talks about the grants it  
19 receives for construction of reuse. I guess a dumb  
20 question on my part, we're getting grants, why aren't we  
21 pursuing more grants to do this instead of billing small  
22 business excessive costs? So if somebody could add some  
23 insight to that that might be instructive.

24 CHAIRMAN CARTER: You're recognized.

25 MR. PORTER: The grant that was provided

1 previously was for the backbone, the main line that serves  
2 the entire reuse system. It wasn't for individual  
3 transmission mains that is used to carry reuse water  
4 around the system to individual customers.

5           As a general rule, in the past the grants Aloha  
6 has received and others have received, there is a test  
7 that has taken place to see how much potable water offset  
8 you are going to get. How much bang for the buck that you  
9 are going to offset by building this line and getting the  
10 money from the water management district, because that is  
11 their goal.

12           Something Marty said earlier was important. You  
13 know, that 800,000 gallons a year that we are talking  
14 about, there is a value to the water resources of the area  
15 for that. That's 800,000 gallons that won't be pumped out  
16 of the groundwater. That's 800,000 that's going to be  
17 taken from reuse water. And the water management  
18 district, when you apply for a grant, you must make  
19 assertions that says I'm going to do all of these things,  
20 and here is how much potable water I'm going to offset by  
21 doing so. And, like I said, in the past it has been to do  
22 the major transmission mains, not the individual mains.  
23 So in the past there was no grant money to us for that  
24 purpose.

25           CHAIRMAN CARTER: Commissioners, let me just do

1 one thing. I was listening, but I didn't hear an answer  
2 to the question. Let me ask the parties, and also ask  
3 staff, what is the actually cost -- what is the actual  
4 cost for this property to connect to the reuse system?  
5 What's the actual cost?

6 MR. DETERDING: You mean if we just extended a  
7 line just to serve them, or --

8 CHAIRMAN CARTER: Yes. I'm saying what is the  
9 actual cost. I mean, we talked about developers going to  
10 see what is he going to do. What is the actual cost? I  
11 see the 300,000, 177. What is the actual cost?

12 MR. DETERDING: I don't think anybody knows the  
13 answer to that question, Commissioner. The developer did  
14 an estimate or had their engineer doing an estimate of  
15 \$177,000. When we originally entered into the agreement,  
16 they told us, informally, that they thought it was 80 to  
17 \$90,000, and we tacked on extra for the letter of credit.  
18 Not saying we thought it would cost that much more, but on  
19 the letter of credit because there were things missing,  
20 including the easement. So I don't think anybody knows  
21 the answer to your question.

22 But I can tell you this, that if you just  
23 extended a two-inch line from the existing connection in  
24 front of Wal-Mart around to their property, that the cost  
25 of that would be a large percentage of the cost to

1 oversize that same line so that it would be extended to  
2 others. That's why the refundable advance was utilized.

3 CHAIRMAN CARTER: How much in American money are  
4 you talking about?

5 MR. DETERDING: As far as dollars? Again,  
6 nobody has ever done -- they did an estimate of \$177,000.  
7 That is the only estimate I know of that was put in  
8 writing.

9 MR. PORTER: The utility usually doesn't do that  
10 estimate, it's the customer.

11 COMMISSIONER ARGENZIANO: Mr. Chair. But the  
12 fact that you did the -- I was going to say promissory  
13 note.

14 CHAIRMAN CARTER: The letter of credit.

15 COMMISSIONER ARGENZIANO: The letter of credit  
16 of 300,000 indicates that you had an idea that because the  
17 easement wasn't acquired, or whatever, that it was going  
18 to cost a lot more.

19 MR. DETERDING: Well, we were playing it safe.  
20 We were trying to be safe to make sure that whatever the  
21 costs were -- I don't think we believe it will cost  
22 \$300,000 to do it all, but we don't know, and we had to be  
23 sure that the customers of the utility were protected from  
24 having to foot this bill.

25 MR. PORTER: And in the end it costs what it

1 costs. So if it is less than that, it would be any more.

2

3 MR. DETERDING: And all it constitutes is a  
4 contribution to the utility, which has no effect on its  
5 bottom line.

6 CHAIRMAN CARTER: Mr. Self.

7 MR. SELF: Thank you, Mr. Chairman.

8 CHAIRMAN CARTER: Same question.

9 MR. SELF: Sorry, I had a different thought. I  
10 lost the question; I apologize.

11 CHAIRMAN CARTER: What does is cost? Remember  
12 my question? I'm just asking -- I mean, we are dancing in  
13 the dark, you know, trying to describe what an elephant  
14 looks like, but the bottom line is really the bottom line.  
15 Has anyone done -- we're saying 300,000, we're saying  
16 177,000. What does it actually cost? Has anyone done --  
17 I mean, we are talking -- a developer who is going to go  
18 out and spend possibly millions of dollars doesn't go out  
19 there and say, you know what, I think today I'm going to  
20 build something that's going to cost a gazillion dollars.  
21 No, you can't go to the lenders, you can't go to the  
22 financial community and say I don't know what it cost to  
23 do this. I don't know what it cost to put in  
24 infrastructure; I don't know what it cost to put in the  
25 roads, the streets; I don't know what it cost to start --

1 to build the model units until we can get some sold. So  
2 I'm asking a very simple question.

3 MR. SELF: And my understanding is the  
4 engineering cost of the pipe was 177,000. But as has been  
5 pointed out, that did not include the easements and the  
6 other piece-parts that are needed in order to make it  
7 happen.

8 CHAIRMAN CARTER: Let me hear from staff,  
9 Commissioners. I know you were asking that question, but  
10 we didn't really get a response.

11 Staff, do you have any idea?

12 MR. FLETCHER: We have not calculated, or  
13 evaluated, or received the actual cost of what it would to  
14 be place the line in, the two-inch to serve only Realm.  
15 Again, we have only received the cost estimates from  
16 Realm, just the engineering portion of \$177,450. Then,  
17 again, Aloha's letter of credit of 300. There has been no  
18 determination or review by a professional engineer of what  
19 the actual cost would be just to serve, placing the  
20 smaller-sized main of two-inch only to serve Realm.

21 CHAIRMAN CARTER: Let me go to Commissioner  
22 McMurrian, and then I will come back to Commissioner Skop,  
23 and then Commissioner Argenziano.

24 Commissioner McMurrian, you're recognized.

25 COMMISSIONER McMURRIAN: My question had to



1 do -- and let it be said that I'm all for Wal-Mart keeping  
2 prices low, but has Wal-Mart paid their fair share of what  
3 take they will have on the system? I guess because we  
4 have talked about them building a four-inch line, and now  
5 we are talking about a six-inch line. Would you need a  
6 six-inch line without Wal-Mart?

7 MR. DETERDING: Wal-Mart did the jack and bore  
8 under State Road 54 to connect into the existing line,  
9 which is far more expensive than extending the line that  
10 Realm is being asked to do. They had a sleeve that is  
11 sufficient in size in doing that jack and bore to allow us  
12 to upgrade the size of that line with minimal additional  
13 cost, so that was part of what Realm was being asked to do  
14 was to take out the four-inch and put in a six-inch, but  
15 it fits in the same sleeve, so that was a minimal cost.  
16 The costs to Realm were the extension of its line. I  
17 believe they said somewhere approximately 2,000 feet, I  
18 think. I don't know if it is that much, but from where it  
19 connects to Wal-Mart around to their property.

20 So that is -- Wal-Mart would not be responsible  
21 for any more of that, because they are there and they have  
22 paid for the extension completely of putting in the line  
23 to serve themselves without a refundable advance. It is  
24 debatable that they might have been entitled to a  
25 refundable advance in order to put in a jack and bore that

1 could accommodate everybody up the line.

2 MR. SELF: But to be clear, the six-inch line  
3 doesn't --

4 CHAIRMAN CARTER: Hang on one second.

5 Commissioners, are we getting anything? I mean,  
6 have we reached a point of diminishing return? Are we  
7 getting anything here? I mean, I asked the question that  
8 you had asked earlier, and Commissioner McMurrin asked  
9 earlier, and I got pretty much the same answer. And I  
10 think we're still where we started when we began this line  
11 of questioning.

12 So the question before us, Commissioners, is --  
13 here is what I'm thinking is that I give each one of the  
14 parties an opportunity to summarize their arguments, and  
15 then let us go into our deliberations, unless the  
16 Commissioners have some questions before we do that.

17 One quick question? Commissioner Skop, you're  
18 recognized.

19 COMMISSIONER SKOP: Thank you.

20 To the comment that was made in terms of the  
21 boring under State Road 54, was that a comp plan  
22 requirement, or was that a requirement that you charged  
23 upon Wal-Mart for the interconnect?

24 MR. DETERDING: Was it a comp plan requirement  
25 --

1           COMMISSIONER SKOP: Comprehensive Plan under  
2 Pasco County. Did somebody else require Wal-Mart to do  
3 that boring and interconnect as opposed to you guys?

4           MR. DETERDING: You mean to connect to the reuse  
5 system? We required it.

6           COMMISSIONER SKOP: So you required it, and then  
7 you charged Wal-Mart accordingly.

8           MR. DETERDING: Yes, sir.

9           COMMISSIONER SKOP: I guess we can proceed.

10          CHAIRMAN CARTER: Thank you, Commissioners. I  
11 think we can just kind of let the parties go ahead on and  
12 make their arguments, and at that point in time we can go  
13 into our deliberations.

14          Mr. Self, you're recognized, and after that, Mr.  
15 Deterding, you're recognized.

16          Mr. Self.

17          MR. SELF: Thank you, Mr. Chairman.

18          Just very briefly; you know, utilities, like the  
19 Commission, are creatures of the law that applies to them.  
20 And the law is very clear that you construe tariffs  
21 against the utility. And I don't see anything in this  
22 sewer tariff or the attached service availability policy  
23 that requires Mr. Dunphy to enter into any of this  
24 agreement. And so as a fundamental starting point,  
25 without authority to require them to do this from a tariff

1 standpoint, from a utility-to-customer standpoint, I don't  
2 see where they have got the authority to require Mr.  
3 Dunphy to do this. They may well have agreements, the  
4 plant may be sized based upon assumptions about reuse,  
5 that's fine, but in terms of how the utility relates to  
6 the customer, it has got to be in the tariff or they can't  
7 do it, and it is not there.

8 CHAIRMAN CARTER: Thank you. Is there anything  
9 else you want to say? I want to be fair. I want to give  
10 the parties an opportunity. Is there anything else you  
11 would like to --

12 MR. SELF: Under these facts and circumstances,  
13 to require this kind of extension, it is unconscionable,  
14 and it's not supported by the statute. So -- thank you.

15 CHAIRMAN CARTER: Thank you.

16 Mr. Deterding, you're recognized.

17 MR. DETERDING: Thank you.

18 This reuse system was started by a requirement  
19 that the utility find a method for effluent disposal.  
20 That is what it is, it is a method for disposing of  
21 treated effluent from the sewer system. Therefore, it is  
22 intertwined with the ability to operate a sewer system,  
23 which as you are probably aware, is generally the most  
24 expensive part of operating a water, sewer, and reuse  
25 system. Reuse is simply there to provide a method to

1 avoid using groundwater and to dispose of sewer. So that  
2 is what we have here.

3           In the reuse case that this Commission undertook  
4 in 1997, the Commission set rates for reuse, set rates for  
5 sewer service based upon the anticipated cost of operating  
6 that reuse system. Nowhere in that application and in the  
7 Commission's decision on that application was there any  
8 consideration of investment by the utility in collection  
9 and -- in distribution facilities for that reuse system.  
10 By implication, that meant they would be contributed just  
11 like the water system has always been contributed, just  
12 like the sewer system has always been contributed.

13           If, in fact, we start to require the utility to  
14 invest in reuse lines, that is going to dramatically  
15 increase the cost of sewer service and/or reuse service.  
16 This company charges 31 cents a thousand, I believe is the  
17 current figure, for reuse service. That does not come  
18 close to covering the cost of providing reuse service,  
19 even if we get the contribution of lines. Once you don't  
20 have the contribution of lines, both sewer service and  
21 reuse, depending on which one you want to shift it into,  
22 go up in cost. And as I have noted in this particular  
23 circumstance, because all new water source comes from  
24 Pasco County, it's going to increase overall water cost.

25           So this is something that has been going on as

1 to the reuse system since its inception. It is the same  
2 as the policy applied to the water and sewer system. It  
3 is common in the industry. And to allow this developer to  
4 opt out, in my opinion, will cause grave harm to not only  
5 the utility's ability to meet its obligations under its  
6 permits, but it is going to cause harm to the general body  
7 of ratepayers. They are all going to pay more in order to  
8 dispose of this customer's reuse. I mean, this customer's  
9 effluent.

10 CHAIRMAN CARTER: Before I recognize the  
11 Commissioners, is there anything else you want to say?

12 MR. DETERDING: No, sir. Thank you.

13 CHAIRMAN CARTER: I want to make sure I give  
14 everybody an opportunity to be heard. We started out with  
15 five minutes initially, but I think that our process is  
16 deliberative and we give every party an opportunity to be  
17 heard.

18 Commissioner Skop, you're recognized.

19 COMMISSIONER SKOP: Thank you.

20 Just as a follow-up question --

21 CHAIRMAN CARTER: You're recognized.

22 COMMISSIONER SKOP: Thank you.

23 I guess I'm just perplexed by the level of  
24 effort given to reuse. Apparently, you know, I understand  
25 the importance of that, but, you know, it seems like we

1 are laying pipe for the sake of laying pipe with no future  
2 development to take up the need of the oversized pipe.  
3 And, you know, I'm just wondering whether that capability,  
4 if you have it to begin with, is not better applied as a  
5 resource somewhere else. If anyone would like to respond  
6 to that.

7 CHAIRMAN CARTER: You're recognized.

8 MR. DETERDING: I think we are not proposing a  
9 pipe of any size larger than that required to provide  
10 reuse up to the Chang property, and nowhere else, the  
11 properties along that same line, that same corridor. We  
12 have no incentive whatsoever to want them to expend excess  
13 funds. We don't do the extension. We ask them to do so  
14 as a condition of service, and then to contribute that  
15 line to us. So we have no incentive whatsoever to want  
16 them to build oversized facilities.

17 We must provide reuse. We must get rid of  
18 treated effluent or we cannot operate a sewer system. So  
19 we have to utilize reuse because, according to our DEP  
20 permit, it is our only method of effluent disposal.

21 CHAIRMAN CARTER: Mr. Self.

22 MR. SELF: And, Commissioner Skop, I think the  
23 point, too, is while the pipe ends at Mr. Dunphy's  
24 property, until those other properties develop, the Chang  
25 is never going to connect into it. And based upon the

1 information staff has gathered, those other properties, at  
2 least for the foreseeable future, many years, are not  
3 going to be developed. And so Mr. Dunphy's opportunity to  
4 be reimbursed for that -- it's really a promise that is  
5 never going to be fulfilled.

6 CHAIRMAN CARTER: Thank you.

7 Commissioners, as I said to you, we are in our  
8 state of deliberation and communication. Obviously we can  
9 ask whatever question to whomever we deem necessary, but  
10 we are in our discussion phase as we bring this in for a  
11 landing.

12 I wanted to follow up with staff. There was  
13 some mention made of a meeting, of who said what, and who  
14 is on first, and that sort of situation. And I think it  
15 would help me to kind of understand, because I heard staff  
16 say one thing and I heard the parties say another thing  
17 about some meeting was held and who said what.

18 Can you address that for the Commissioners,  
19 please?

20 MS. FLEMING: Sure, Commissioners. There was a  
21 meeting held in December of 2007 where I believe all the  
22 undeveloped or property owners from that area attended as  
23 well as the water management district. And Mr. Rendell  
24 was there on behalf of the Commission; Jared Deason and I  
25 participated by phone. And it was a meeting to get all



1 the property owners involved to discuss the Dunphy  
2 complaint.

3           Staff's concern was, depending on how the  
4 Commission would vote on Dunphy's complaint, would we have  
5 this issue arise with the other property owners that are  
6 down the line. And so we wanted to get all the property  
7 owners in the room together to figure out if there is a  
8 way that the property owners together can come up with  
9 some resolution with Aloha to resolve this. We suggested  
10 mediation, none of the parties were interested.

11           It seemed to us at some point that there might  
12 have been some sort of resolution to the problem here that  
13 the property owners were willing to -- Aloha was going to  
14 put forth the requirements that the property owners had to  
15 put forth regarding the reuse line. Conversations fell  
16 through, and there was no resolution reached.

17           During that meeting, the issue of the five-year  
18 refundable advance agreement came to light. It was  
19 raised, once again, that Mr. Dunphy would never get  
20 reimbursed because the properties adjacent to him would  
21 never be developed in the five years in order for him to  
22 receive a refund on the funds that he has expended.

23           At that point I suggested, or I asked Aloha's  
24 attorney why is there a five-year refundable advance  
25 agreement, and I was told that it was part of their

1 tariff. And staff suggested that the tariff can be  
2 modified. And at that point we were told that that was  
3 not something they were considering at the time.

4 CHAIRMAN CARTER: I'm sorry. The last, your  
5 last communication was --

6 MS. FLEMING: We were told that that's not  
7 something that they're considering at that time.

8 CHAIRMAN CARTER: Thank you. Commissioners, I  
9 want -- I noticed we heard that in our discourse this  
10 afternoon and I wanted to kind of flush that out so we  
11 could be clear on that point. And then, as I said, we're  
12 in our discussion phase and, Commissioner Skop, you're  
13 recognized.

14 COMMISSIONER SKOP: Thank you, Mr. Chair.

15 Again, I have somewhat strong emotions. I mean,  
16 I think at the appropriate time I'd be willing to make the  
17 motion to support staff recommendation, and I think my  
18 rationale for that is couple fold.

19 The question hasn't been posited, but, you know,  
20 obviously there's not going to be substantial development  
21 along the proposed line. I recognize the use for reuse  
22 water, but, you know, I wonder whether there's more  
23 suitable areas of more higher growth that would be better  
24 places to extend pipes and get more bang out of the buck,  
25 if you will. But, again, it comes down, too, when you

1 have competing resources and you can only do so much in a  
2 corporate entity, you tend to rank your projects  
3 appropriately. And if I, if I were a corporate business  
4 manager faced with extending a line going to nowhere, that  
5 really doesn't accomplish a lot for me as opposed to  
6 dedicating those resources elsewhere to more pressing  
7 problems. And so at the appropriate time I think my  
8 mind-set would be, based on what I've heard and the  
9 evidence before me, to move staff recommendation. Thank  
10 you.

11 CHAIRMAN CARTER: Thank you, Commissioner.

12 Commissioner McMurrian, you're recognized.

13 COMMISSIONER McMURRIAN: If now is the  
14 appropriate time to second, I'll second that motion.

15 CHAIRMAN CARTER: One moment. Commissioner  
16 Argenziano.

17 COMMISSIONER ARGENZIANO: Yes. I just have -- I  
18 know everybody is tired of this discussion pretty much,  
19 but I have a couple of things I just want to, want to just  
20 get out.

21 CHAIRMAN CARTER: You're recognized.

22 COMMISSIONER ARGENZIANO: Because it's really,  
23 you're really stuck between a rock and a hard place. I  
24 can understand the utility saying they're at capacity, I  
25 understand what that means, and I understand what's going

1 to happen there, and probably the result if we go with  
2 Commission, I mean, staff's recommendation would mean to  
3 other customers. So I have concerns there. But at the  
4 same time I don't believe that you have authority to force  
5 Realm Property to hook up to the, to the reuse.

6           And it kind of, it just -- the other thing that  
7 really bothers me about this is that, that the medical  
8 center, which I understand the distance and the cost of  
9 that distance, but who's to say what burden that is, you  
10 know? I know the burden of a million or so dollars to  
11 Chang Medical Center would be incredible, but who's to say  
12 it's not a burden to the, even the adjoining facilities?  
13 So that's why I mean we're stuck between a rock and a hard  
14 place. I don't think this discussion ends here. I think  
15 there's going to be some problems, but -- and that's  
16 probably -- you know, central systems seem to be plagued  
17 with these type of problems because of the costs and so  
18 on.

19           So I think the Legislature is going to be faced  
20 with some policy changes. But at this time I just don't  
21 think you have the authority to force them to hook up, and  
22 that's what I wanted to get on the record. Understanding  
23 I know there's going to be ramifications of that, but  
24 that's how I feel at this time.

25           CHAIRMAN CARTER: Commissioner Edgar.

1           COMMISSIONER EDGAR: Thank you, Mr. Chairman. I  
2 appreciate all the, the questions and discussions from my  
3 colleagues and the opportunity to sit back and listen this  
4 time as I'm fading fast. But, you know, I, as I'm sure  
5 many of you agree, am a strong supporter of reuse and do  
6 believe that it is a policy that needs to be promoted by  
7 this Commission as well in the role that we have in an  
8 overall state water policy in implementing it. However, I  
9 come back to the language in the statute that is also  
10 quoted in the item before us that says that they are to  
11 be, reuse projects are to be environmentally, economically  
12 and technically feasible. And when I look again at the  
13 precise language and the issue before us, which is should  
14 Realm be required to install the reuse line at this time,  
15 it seems to me that the weight of the discussion is --  
16 that the answer is no, which is in keeping with the staff  
17 recommendation. So I'm ready to support that when the  
18 time is right.

19           CHAIRMAN CARTER: Commissioners? Commissioner  
20 McMurrrian.

21           COMMISSIONER McMURRIAN: Thank you, Chairman. I  
22 just wanted to follow up on Commissioner Argenziano's  
23 point also. And I agree with everything that's been said,  
24 but is there some way, and I wanted to ask staff, I know  
25 we've moved beyond the questions of staff, but is there

1 some way under our current authority for us to look at  
2 perhaps a more equitable way to make sure that those who  
3 benefit from an extension like this, that you don't have  
4 this Chang Medical Center stuck up here and perhaps they  
5 would benefit by getting reuse as well? Is there some  
6 more equitable way -- can we look at more equitable ways  
7 to sort of make sure that people pay their fair share  
8 without sticking the cost on the next closest business?

9 MR. FLETCHER: Right. Commissioner McMurrin,  
10 the oversight of the Commission, we're not, you know, in  
11 the day-to-day operations to know when they're going to be  
12 negotiating. So unfortunately it's -- our monitoring role  
13 would be for them to come and point that out to us and us  
14 to evaluate the hydraulic share and the situation, and  
15 given their service territory, to look at that. I'm not  
16 sure of a mechanism that we can put into place to where  
17 we'd have that monitoring role.

18 COMMISSIONER McMURRIAN: Okay.

19 MR. FLETCHER: To that nature it's basically  
20 like for the billing issues that we have, we rely on the  
21 customer complaints in bringing that to our attention.

22 COMMISSIONER McMURRIAN: Chairman, it was worth  
23 a try. I mean, and maybe if there's something that a  
24 utility, if they see some better way to do this or some  
25 proposal they could put forward to whatever appropriate

1 place, that is whether it's to us or to the Legislature or  
2 whatever, but I do think it's an important point to follow  
3 up on however it can be.

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

6 COMMISSIONER SKOP: Thank you, Mr. Chair. And I  
7 appreciate the additional discussion. I think  
8 Commissioner Edgar also raised some good points in the  
9 statute because "economically and technically feasible,"  
10 one could make arguments under either of those. I mean,  
11 although something seems readily technically feasible,  
12 that's not always the case.

13 Anyway, I think that we have a motion and  
14 properly seconded to move staff. And I think Commissioner  
15 McMurrian has seconded that, so it would be ready for a  
16 vote.

17 CHAIRMAN CARTER: Commissioners, any questions  
18 on this staff recommendation? All in favor, let it be  
19 known by the sign of aye.

20 (Unanimous affirmative vote.)

21 All those opposed, like sign.

22 Commissioners, anything for the good of the order? I  
23 know that you didn't get lunch today. Anything for the good of  
24 the order? Hope everybody feels better. We are adjourned.

25 (Agenda adjourned at 2:09 p.m.)

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTERS  
3 COUNTY OF LEON )  
4

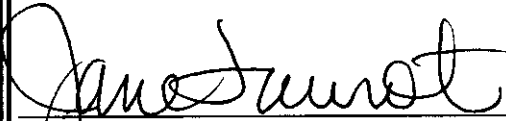

5 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official  
6 Commission Reporters, do hereby certify that the foregoing  
7 proceeding was heard at the time and place herein stated.

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

13 WE FURTHER CERTIFY that we are not a relative, employee,  
14 attorney or counsel of any of the parties, nor are we a  
15 relative or employee of any of the parties' attorneys or  
16 counsel connected with the action, nor are we financially  
17 interested in the action.  
18

19 DATED THIS 10th day of March, 2008.

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|---|--|
|  |  |
| JANE FAUROT, RPR  | LINDA BOLES, CRR, RPR  |
| FPSC Official Commission Reporter   | FPSC Official Commission Reporter  |
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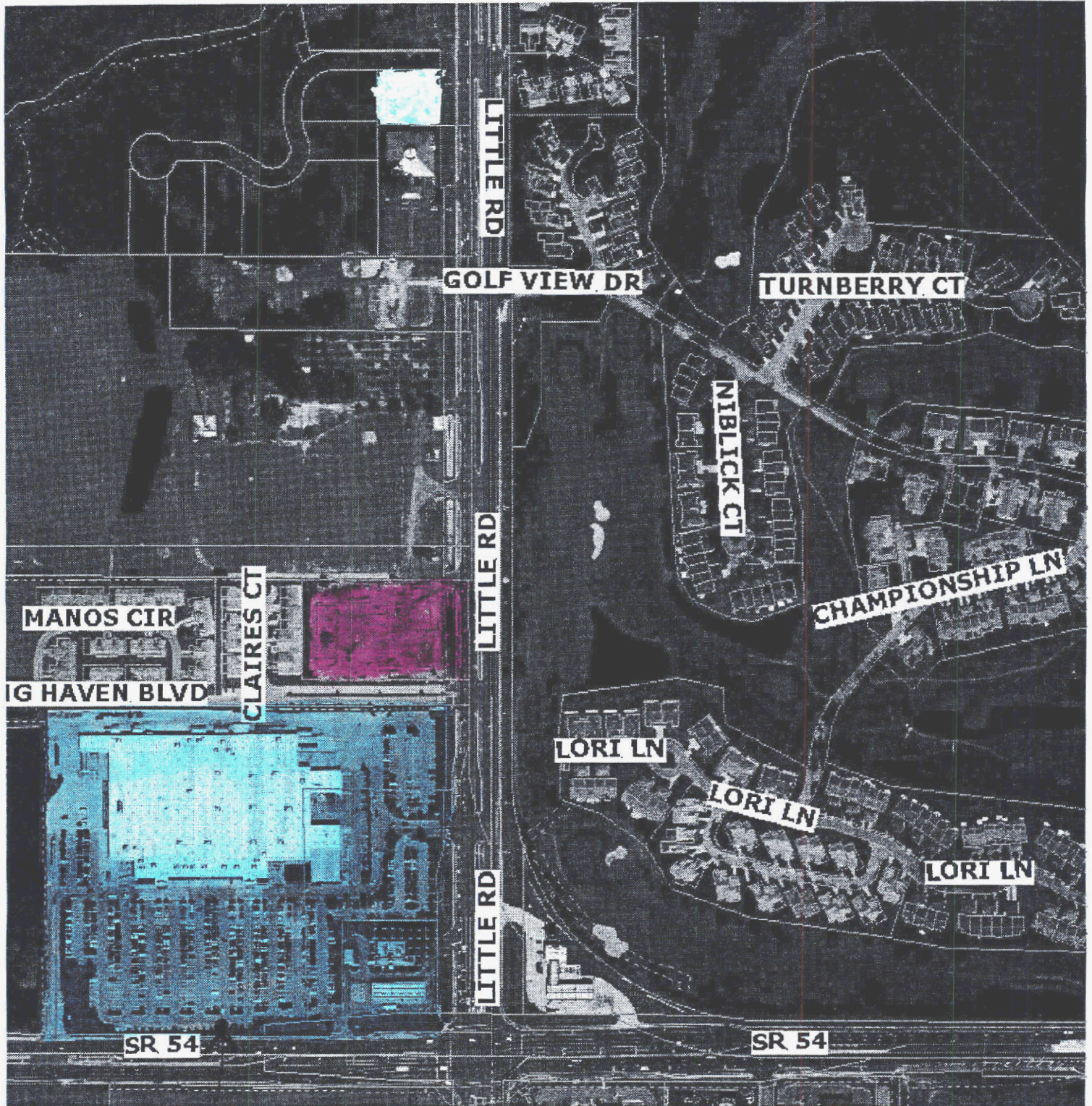


Pasco County, Florida  
3.0 miles ESE of Elfers

Prepared by the Office of Mike Wells, Pasco County Property Appraiser.

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