



Public Service Commission

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DATE: NOVEMBER 7, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM Mett*
DIVISION OF ECONOMIC REGULATION (WALDEN) *AW*
DIVISION OF CONSUMER AFFAIRS (LOWERY) *PaDea* *JDT*

RE: DOCKET NO. 020896-WS - PETITION BY CUSTOMERS OF ALOHA UTILITIES, INC. FOR DELETION OF PORTION OF TERRITORY IN SEVEN SPRINGS AREA IN PASCO COUNTY.

AGENDA: 11/19/02 - REGULAR AGENDA - MOTION TO DISMISS - ORAL ARGUMENT REQUESTED/PARTY PARTICIPATION SUBJECT TO COMMISSION RESOLUTION OF ISSUE 1

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020896.RCM

CASE BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. A hearing on this application was subsequently held in Pasco County on January 9 through 11, 2002, and the Commission issued its Final Order No. PSC-02-0593-FOF-WU (Final Order) on April 30, 2002.

DOCUMENT NUMBER-DATE
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In its Final Order, the Commission found that the overall quality of service of Aloha was unsatisfactory, and directed Aloha to improve its water treatment system starting with wells 8 and 9, and then continuing with all of its wells to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. The Final Order directed that these improvements to all of Aloha's wells were to be placed into service no later than December 31, 2003. In addition, Aloha was directed to submit a plan within 90 days of the Final Order showing how it intended to comply with the above-noted requirements for the removal of hydrogen sulfide. In addition, the Final Order directed Aloha to implement five customer service measures within 120 days from the date of the Final Order.

On May 28, 2002, Aloha filed its timely Notice of Appeal, and on June 14, 2002, Aloha filed its Motion for Stay. The Commission considered Aloha's Motion for Stay at its July 23, 2002 Agenda Conference and subsequently, August 5, 2002, issued Order No. PSC-02-1056-PCO-WU (Stay Order), which granted in part and denied in part Aloha's Request to Stay the Commission's Final Order.

On September 9, 2002, Aloha filed its Motion to Review the Commission's Stay Order with the First District Court of Appeal (First DCA). On October 7, 2002, the First DCA issued an order denying Aloha's Motion to Review the Commission's Stay Order and Motion to Stay. As a result of the Court's denial of Aloha's motion, Aloha must proceed with submitting a plan showing how it intends to remove the hydrogen sulfide from its raw water, and implement the customer service and conservation measures. Briefs have been filed, and on October 29, 2002, Aloha filed its Request for Oral Argument before the First DCA.

On July 18, 2002, the Commission received a letter dated July 16, 2002, from V. Abraham Kurien, M.D. (Dr. Kurien), a customer of Aloha, which was accompanied by a petition (Customers' Petition) which had been signed by 1,491 residents from 1,314 households located in a portion of the Seven Springs Service Area of Aloha. In his letter, Dr. Kurien states that the Customers' Petition represents close to 80% of the domestic customers of Aloha Utilities who over a number of years have continued to experience unsatisfactory quality in their potable water in the form of black water, rotten egg smell, copper pipe corrosion or combinations of these manifestations. The petition itself requests that the Commission grant the customers relief from being "captive

customers" of the utility, and states four reasons on which the request is based:

Aloha Utilities has not been providing potable water to customers in our service area that meet the concept of 'competitive standard' set out by the PSC in its April 30, 2002 Order No. PSC-02-593-FOF-WU, as evidenced by the continuing high incidence of 'black water,' 'rotten egg smell,' and copper pipe corrosion, issues that have not been remedied since being raised almost ten years ago, whereas neighboring Utilities have effectively reduced such problems.

Aloha Utilities, Inc. has not instituted available processing methods (adopted by neighboring Pasco and Pinellas County Utilities) that have reduced the incidence of copper pipe corrosion and 'black water' but has continued with the sole method of super chlorination, which has so far proved ineffective and can have serious side effects.

Aloha Utilities has demonstrated an unwillingness and/or inability to meaningfully address our concerns by improving the characteristics of potable water so as not to cause harm to our property and/or health, and has continually stone-walled all recommendations for solving the problems using legalistic claims that it already provides 'clean, clear and safe' drinking water.

Aloha Utilities' lack of transparency about its water processing plant and methods has undermined the confidence of the customers in the safety of the water it supplies.

Following the receipt of the above-described letter and petition, this docket was established in order to consider the issues raised in the petition. On September 11, 2002, the Office of Public Counsel (OPC) filed its Notice of Intervention. By Order No. PSC-02-1274-PCO-WS, issued September 18, 2002, OPC's intervention was acknowledged. On September 26, 2002, the Commission received Edward O. Wood's letter dated September 23, 2002, in which he requested that he be listed as an "Official Party of Record." A copy of that letter was forwarded to all the parties, and no response was received. Thus, by Order No. PSC-02-1504-PCO-

DOCKET NO. 020896-WS
DATE: NOVEMBER 7, 2002

WS, issued November 4, 2002, Mr. Wood was granted Intervenor status.

On September 5, 2002, Aloha filed its Motion to Dismiss which was accompanied by a Request for Oral Argument. On September 13, 2002, Dr. Kurien filed his Rebuttal to the Motion to Dismiss, and on September 17, 2002, OPC filed its Response to Motion to Dismiss. On November 4, 2002, staff received a letter from Dr. Kurien submitting additional arguments to his Rebuttal to Aloha's Motion to Dismiss. On November 7, 2002, Aloha filed its Motion to Strike.

This recommendation addresses whether the Customers' Petition, along with Aloha's Motion to Dismiss, Request for Oral Argument, and the Responses thereto, should be held in abeyance until the First DCA renders a decision on the appeal of the Commission's Final Order. The Commission has jurisdiction to consider this matter pursuant to Sections 367.121 and 367.111, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Customers' Petition, along with Aloha's Motion to Dismiss, Request for Oral Argument, and the Responses filed thereto, be held in abeyance until the First DCA has rendered an opinion on Aloha's appeal of the Commission's Final Order?

RECOMMENDATION: Yes, the Customer Petition, along with Aloha's Motion to Dismiss, Request for Oral Argument, and the Responses filed thereto, should be held in abeyance until the First DCA renders an opinion on Aloha's appeal of the Commission's Final Order. If the Commission declines to abate the Customers' Petition and Aloha's Motion to Dismiss, a subsequent recommendation on the Motion to Dismiss will be filed at a later date. (HOLLEY)

STAFF ANALYSIS: As stated in the case background, the Customers' Petition requests relief by the Commission on several grounds.

The petition further states:

THEREFORE, we request that the Plan of Action that Aloha Utilities has been asked to submit to the PSC in its April 30, 2002 Order No. PSC-02-593-FOF-WU be approved only after an independent audit of Aloha's processing plant and methodology and only if the Action Plan contains the minimum requirements adopted by neighboring utilities for raw water processing and if a Citizens' Advisory Committee is created to monitor the effectiveness of any plan that is accepted.

We would further request the PSC to order Aloha Utilities Inc. to put into effect new minimum requirements for processing water by April 30, 2003 in the hope that an earlier institution of remedial methods will lessen the likelihood of additional damage to our copper plumbing as well as the continued formation of hydrogen sulfide in the CPVC systems.

IF SIGNIFICANT RESOLUTION OF THE PROBLEM DOES NOT OCCUR by June 30, 2003 even after the institution of additional processing methods, the Public Service Commission is hereby requested to exercise its authority of 'granting a certificate and setting the service territory of any utility' to sequester the Seven Springs Area from Aloha

Utilities and make it part of the service area of Pasco County water utility system.

The subject of the Customers' Petition and the issues contained therein are subsumed in the issues raised in Aloha's Appeal of the Commission's Final Order currently pending before the First DCA. Aloha has appealed the Commission's Final Order in its entirety, including the mandate that Aloha make improvements to wells number 8 and 9, and eventually to all of its wells and the implementation of a treatment process designed to remove at least 98% of the Hydrogen Sulfide in its raw water. In addition, the appeal of the Final Order includes the requirement that Aloha submit a plan within 90 days of the date of the Final Order showing how Aloha intends to comply with the requirement to remove Hydrogen Sulfide.

Staff believes that the issues raised in the Customer Petition are inextricably entwined with the Final Order currently on appeal. In the absence of a Commission Motion to relinquish jurisdiction under Rule 9.600(b), Florida Rules of Appellate Procedure, the Commission's authority to act in the docket is extremely limited. Therefore, staff recommends that the Customers' Petition, along with Aloha's Motion to Dismiss, the Request for Oral Argument, and the Responses filed thereto, should be held in abeyance until the First DCA renders an opinion on Aloha's appeal of the Commission's Final Order. If the Commission declines to abate the Customer Petition and Aloha's Motion to Dismiss, a subsequent recommendation on the Motion to Dismiss will be filed at a later date.

DOCKET NO. 020896-WS
DATE: NOVEMBER 7, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the outcome of the appeal of the Final Order before the First DCA.
(HOLLEY)

STAFF ANALYSIS: This docket should remain open pending the outcome of the appeal of the Final Order before the First DCA.