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JACK SHREVE
PUBLIC COUNSEL

February 21, 2001

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 991643-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies each of a Motion for Reconsideration and Request for Oral Argument for filing in the above-referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Motion for Reconsideration in WordPerfect for Windows 6.1 format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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Motion
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Req OA
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.	)))))	Docket No. 991643-SU Filed: February 21, 2001

MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Section 350.0611, Florida Statutes, and Rule 25-22.060, Florida Administrative Code, hereby file this motion for reconsideration of Order No. PSC-01-0326-FOF-SU. As grounds, the Citizens submit:

By denying the customers the benefit of flow reductions that have been predicted by the utility itself and are the result of a program fully funded by the customers' rates, the Commission improperly relied on prior cases that have no factual relation to the facts at hand.

1. Order No. PSC-01-0326-FOF-SU held that Aloha's customers should be required to continue paying approximately $15,000 per month for a two-year program that is specifically designed to reduce inflow and infiltration (p. 17-18). Order No. PSC-01-0326-FOF-SU found that as this program progresses it should reduce inflow and infiltration by an additional 30,000 gallons per day. Order No. PSC-01-0326-FOF-SU, however, decided that the customers should not receive the benefits from this I&I reduction for which they are paying.

2. As the Order accurately states, OPC believes that it is axiomatic that whoever bears the cost of a program should receive the beneficial results of that program. As Order No. PSC-01-0326-FOF-SU puts it:

> If, however, we include this expenditure in rates, OPC states that we should impute further I&I reduction. Moreover, OPC argues that we should either adjust the U&U, the electric expense and the chemical expense to reflect the reduced I&I, or remove the program expenditures.
>
> [Id., p. 17]

3. Order No. PSC-01-0326-FOF-SU does not deny that there will be further I&I reduction. As the Order states:

> Utility witness Porter testified that there was an additional 30,000 GPD of I&I still in the system.
>
> [p. 17]
>
> and
>
> Because Mr. Porter's testimony is based on actual studies and Mr. Biddy's testimony is based on an assumption, we find that the 30,000 GPD figure is more reliable.
>
> [p. 18]

From the Order, it seems that the Commission expects the I&I program to reduce next year's flow by 30,000 gallons per day.

5. The Commission, however, decided that the customers should not receive the benefit of the lower expenses that will result from the flow reduction of 30,000 gallons per day. The Commission based its decision on its "practice not to adjust O&M expenses in these cases unless there is excessive I&I" (p. 65). Order No. PSC-01-0326-FOF-SU cites two previous PSC orders that

are purported to support its action in the instant case: Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS and Order No. PSC-00-1163-PAA-SU, issued June 26, 2000, in Docket No. 990937-SU.

6. By relying on those two orders for its decision in the instant case, the Commission committed two fundamental errors. First, the cases cited have no application to the facts in the current case and no application to the rationale for making an adjustment in the current case.

7. In neither of the cited cases was the utility undertaking a major capital project to reduce I&I. This fact is at the very heart of the rationale for reflecting an expense adjustment for reduced flow in the projected test year.

8. In the current case, Aloha's ongoing capital project in the projected test year (9/2000 - 9/2001) is expected to reduce the flow due to I&I. Accordingly, one must adjust the anticipated flow by 30,000 gallons per day just to get an accurate projection for the future test year that is being used. OPC's recommended adjustment is necessary simply to reflect the reality that will exist in the period for which rates are being set. In the cited cases, on the other hand, no such flow reduction program was underway, so no change in the I&I was expected. Those test years did not need to be adjusted to reflect an anticipated reduction in flows.

9. In addition, the cited cases are fundamentally different from Aloha, in that those customers were not being charged the cost of a program undertaken for the specific purpose of reducing the I&I. This factor is at the very heart of the issue in this case. It is precisely because the customers are forced to pay for the entire I&I reduction program that it is fundamentally unfair to then withhold the benefits which Aloha itself says will result from the I&I program. The fundamental equation is this: if customers bear all of the costs of an I&I program, they are entitled

to all of the benefits from that I&I program. To cite cases wherein the customers were not paying for a major I&I program misses the point entirely, and leaves out the very premise of the fairness equation that OPC had raised.

10. Perhaps this point can be better seen through an analogy.

Suppose a utility undertakes an expensive, exhaustive managerial audit for the express purpose of reducing managerial costs; further, suppose the utility identifies specific quantifiable managerial savings that result from the audit; finally, suppose the utility asks for recovery of the entire expense of the management audit, but asks that the benefit of the expense reductions be withheld from the customers. Surely (hopefully), the Commission would not cite to past cases in which there had not been a management audit undertaken and conclude: "In these past cases we disallowed management expenses only when they were shown to be excessive, so in the current case we cannot recognize any of the known cost reductions because they were not shown to be excessive." Just as in the analogous hypothetical, in Order No. PSC-01-0326-FOF-SU the Commission applies past cases that are factually irrelevant to the current case. Of course those past cases adjusted for I&I only if it was shown to be excessive. There would be absolutely no reason to make an adjustment unless I&I was found to be excessive. In the current case, however, there is a fundamental reason that did not exist in the cited cases, namely, the customers' full payment for a program specifically designed to reduce I&I. The Commission erred fundamentally when it considered the facts of the cited cases to be applicable to the current issue.

11. The second fundamental error is that the PSC cannot rely on two past orders as its sole justification to apply a "policy" that is not articulated through evidence in the current case. On page 65 of Order No. PSC-01-0326-FOF-SU, the Commission states that:

[I]t is our practice not to adjust O&M expenses in these cases unless there is excessive I&I (See Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS and Order No. PSC-00-1163-PAA-SU, issued June 26, 2000, in Docket No. 990937-SU). . . .

Those cases are offered for the proposition that excessive I&I is the only reason to adjust O&M expenses in "these cases." The Citizens agree that excessive I&I is one valid reason to adjust O&M expenses. As pointed out, however, the Citizens also believe there can be other valid reasons to adjust O&M expenses. One such reason is when the company itself admits that its projected flows actually will be 30,000 GPD less than reported because of an I&I program, the full cost of which has been included in the projected test year. It is based on this reason, that the OPC believes O&M expenses should be adjusted. If the PSC is to reject OPC's regulatory theory, it must rely on either (1) evidence adduced in this case or (2) applicable administrative rule. The bare reference to two past orders does not substitute for evidence or rule to support a finding.

By allowing the utility $175,000 of additional projected O&M expenses for the purpose of maintaining a new treatment plant, the Commission has improperly placed the burden of proof on the customers, as respondents in this proceeding.

12. The Commission allowed Aloha $175,000 as projected additional O&M expense to service the new treatment plant. The OPC challenged the validity of this figure, as Order No. PSC-01-0326-FOF-SU explains:

> OPC does not argue that there will be no maintenance expense. It merely argues that the maintenance expense will not be near the 5% or $175,000 figure. OPC believes that it is Aloha's burden to bring forward an accurate figure that is applicable to the first few years of plant life.
>
> [Id., at p. 67]

The 5% was originated by DEP as a reasonable expectation for average annual expenses over the full lifetime of the asset. It should be intuitively obvious that over the lifetime of a large plant, there will be a greater number of significant non-capitalized repairs encountered toward the end of the life of the plant, as compared to its first few years. This difference would be particularly accentuated during any warranty period (T-489). This phenomenon is painfully evident to anyone who uses an automobile (or boat, or large air conditioning unit) for its entire useful life. If the lifetime annual average benchmark is used for the early, less expensive years, what happens when the more expensive breakdowns are encountered in later years? Will the Commission hold to the annual average because of the generosity in the early years? The OPC does not expect that it will. It is out of this concern that OPC argued that the Commission should hold Aloha to the burden of demonstrating affirmatively and specifically why a purported lifetime annual average is appropriate for the first years' operations. Instead, the Commission held OPC to the burden of proving the negative, stating:

> In reviewing this issue of the appropriate maintenance expense, we note that this is a projection and that no one can state what the exact expenses will be for the next year. OPC gave no estimates of its own; it only stated that the utility should produce an accurate figure.
>
> [Order No. PSC-01-0326-FOF-SU, at p. 67].

The Commission then relied on Mr. Porter's bare, unsubstantiated statement that based on his 25 years' experience, the 5% is a reasonable figure. The Commission's method of analysis places the burden of proof on the OPC, rather than where it legally belongs, on the utility which initiated a case seeking an affirmative change to its existing rates.

WHEREFORE, the Citizens of the State of Florida, respectfully seek the Public Service Commission to reconsider Order No. PSC-01-0326-FOF-SU, in accordance with the issues raised herein.

Respectfully submitted,

Jack Shreve
Public Counsel

Stephen C. Burgess
Deputy Public Counsel

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 991643-SU

I HEREBY CERTIFY that a copy of the foregoing MOTION FOR RECONSIDERATION has been furnished by U.S. Mail or *hand-delivery to the following parties this 21st day of February, 2001.

Ralph Jaeger*
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