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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Aloha Utilities, Inc.)
for Increase in Wastewater Rates in its Seven) DOCKET NO. 991643-SU
Springs System in Pasco County, Florida)
)

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ALOHA'S RESPONSE TO OPC'S MOTION FOR RECONSIDERATION

Aloha Utilities, Inc. ("Aloha"), by and through its undersigned counsel, hereby files this Response to OPC's Motion for Reconsideration, and in support thereof would state and allege as follows:

1. This Commission should deny OPC's Motion for Reconsideration. OPC's Motion does nothing more than reargue two issues which were the subject of detailed testimony from Aloha's witnesses (who were subject to cross-examination by the Staff and OPC) which the parties had every opportunity to exhaustively brief before the Commission. This Commission has often had occasion to restate its standard in reviewing motions for reconsideration. Numerous PSC orders on motions for reconsideration contain language very much like the following:

> The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); (citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse at 317.

See, e.g., Order No. PSC-00-2534-PCO-SU.

2. In this case, OPC has failed to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order.

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3. OPC's first ground for reconsideration relates to Issue 27. In its Order, the Commission determined that no adjustment was necessary to chemicals and purchased power expenses as a result of Aloha's infiltration and inflow reduction program. Order No. PSC-01-0326-FOF-SU concluded that Aloha's continuing I/I program was consistent with the proper management of any utility such as Aloha and found such utilities should both have such a continuing program and an expense built in so that they can inspect the system to determine if repairs will need to be made to reduce I/I. The Order specifically concluded that the cost of Aloha's I/I reduction program are prudent. See, *id.*, page 18. OPC's Motion for Reconsideration , in fact, does not take issue with the determination of the prudency of Aloha's ongoing I/I reduction program. The real point of OPC's Motion is that this Commission should not have declined to accept OPC's suggestion that there should be a commensurate reduction in chemicals and purchased power expenses which somehow resulted from this reasonable and prudent I/I reduction program.

4. Despite the fact that the only testimony on this issue to support OPC's position came from an OPC witness who relied upon another OPC witness whose testimony was rejected (discussed in detail, *infra*), it appears that OPC's point with regard to this issue is that the Commission's determination that Aloha's I/I reduction program is likely to eliminate an additional 30,000 gpd somehow means that the only purpose of the I/I reduction program is to eliminate that gallonage. In point of fact, as discussed in detail *infra* and as established in the testimony and consistent with the Commission's Order, this ongoing program is in place to the mutual benefit of the Utility and its customers, and is a prudent action on the part of Aloha. It is not a program strictly designed to "hunt down" some "30,000 gpd of I/I" and eliminate it, although the location and minimization of I/I is the goal of the program. In fact, a second goal of the program is to avoid the kind of pitfalls that Mr. Porter testified about in his testimony by finding problems before they mature or become exacerbated. OPC stated grounds for reconsideration of this issue clearly misapprehends the continuing purpose of Aloha's I/I reduction program. Aloha maintained, and the

Commission accepted and found as fact, that this I/I reduction program is an activity in which Aloha should continue to engage in the continuing future, not only with the hope of eliminating any I/I discovered by the program, but also in preventing future I/I to the benefit of the Utility and its customers. The program will not somehow magically end or cease to exist if 30,000 gallons of I/I is located. New I/I appears on a sporadic basis in any large utility systems and must be dealt with appropriately. As with any large, well-run utility, this is also the case for Aloha. This is not a program which starts on a date and ends on a specific date, and whose goal is eliminated or accomplished upon the location of a predetermined amount of I/I. Despite the fact that Aloha's I/I/ reduction program was initiated pursuant to a DEP directive, this program, whose costs have been determined to be prudent by this Commission (a determination which is unchallenged by OPC) will be and should be a continuing one.

5. The evidence in this case clearly supports the Commission's determination that no adjustment is necessary to chemicals and purchased power expenses as a result of Aloha's I/I reduction program. OPC witness Mr. Larkin had proposed this adjustment based solely upon Mr. Biddy's testimony (contending that Aloha's collection system has excessive I/I of 280,000 gpd). However, it was clear that Mr. Biddy's calculations and assumptions regarding the presence of any "excessive" I/I in Aloha's system was faulty and this evidence was specifically rejected by the Commission. See pages 17 and 18 of the Order. OPC's request that this matter be reconsidered is nothing more than an attempt to have this Commission make an adjustment based upon the removal of an anticipated amount of "excessive" I/I in the system which, in point of fact, the testimony and evidence clearly revealed did not exist in the first place. The Order properly found that the actual amount of I/I which was likely to be removed from the system was "a relatively negligible amount and is not a justification for reducing operation and maintenance costs". See page 18 of the Order. This Commission also properly found that "based on our finding that the Aloha collection system did not have excessive I&I, and because it is our practice not to adjust O&M expenses in these cases

unless there is excessive I&I," that no such adjustments of chemicals or purchased power would be made.

The simple fact is that if Mr. Biddy's testimony regarding excessive I/I cannot stand, then the conclusions of Mr. Larkin, which rests solely upon Mr. Biddy's specious calculations, also cannot stand.

6. The Commission's Order merely recognized that because OPC's expert (Mr. Larkin) had predicated his testimony on this issue upon the "opinions" of another OPC expert (Mr. Biddy), and because the Commission rejected the relevant testimony of Mr. Biddy, then Mr. Larkin's conclusions could not stand.

7. OPC attacks the two Orders referenced by the Commission and states that "bare reference to two past orders does not substitute for evidence or rule to support such a finding". In point of fact, there was a plethora of evidence presented on these issues. To the apparent disappointment of OPC, the Commission in its sound discretion accepted the evidence on these issues, which was presented by Aloha. OPC attempts to label Aloha's I/I program, which the Commission determined was a prudent and necessary function on behalf of any well-managed utility (such as Aloha), as a "major capital project" to reduce I/I. OPC, by this statement and by its request for reconsideration of this issue, takes issue with the Commission's sound determination that Aloha's I/I program was prudent, was necessary, and was advisable as a continuing matter of sound utility practice, rather than some extraordinary capital project being undertaken under some unique or unusual circumstances.

8. OPC's second issue on which reconsideration is sought appears to relate to Issue 29. Order No. PSC-01-0326-FOF-SU properly determined that while OPC did not argue there would be "no maintenance expense", neither did it provide any testimony attempting to estimate those expenses. The utility presented the expert testimony of two witnesses, and the Order properly determined that the Aloha's testimony was based both upon appropriate guidelines and the expert

opinion of Mr. Porter. In stark contrast to Mr. Porter's 25 years experience, Mr. Biddy acknowledged he had no experience in the startup and ongoing O&M of such a wastewater treatment plant. See the Order at page 67.

9. OPC attempts to argue that the Commission Order somehow "shifts" the burden on this issue to OPC. In point of fact, all the Order does is note that there was credible evidence on the issue produced by Aloha, and that there was a complete lack of evidence produced on the issue by OPC. In this case, it was completely appropriate for the Commission to accept Aloha's competent and detailed testimony on the point, and to make findings based upon that testimony, in the face of a complete lack of contrary evidence introduced by OPC or any other party or entity. To claim that Mr. Porter's and Mr. Nixon's expert opinions are a "bare, unsubstantiated statement(s)" is to ignore the role experts play in litigation. If any opinion testimony was unfounded or improper, the time to prove that was in cross-examination, not in a motion for reconsideration.

10. The evidence presented in this proceeding clearly revealed that no adjustment should be made to Contractual Services to remove the projected maintenance expense for the new plant. Not only does the evidence provided by Aloha clearly support the projected maintenance expense as being a *conservative* figure, there is no credible evidence on the record to otherwise suggest or support any adjustment whatsoever to that projected maintenance expense.

It was the clear and unequivocal testimony of Mr. Porter that the five percent number utilized for projected maintenance expense for the new plant was certainly fair and reasonable and, if anything, it was actually understated (TR930/L12). Mr. Porter testified that the five percent allowance was an accepted figure and one that Mr. Porter had been using in the industry for 25 years (TR930/L05). Mr. Porter had prepared and had available a document that showed in detail every preventative maintenance component and which reflected that, in fact, the five percent understated the expected amount for maintenance expense (TR930/L05). It was Mr. Porter's opinion that the amount would in fact be $188,000 just for preventative maintenance, and that this figure did not even

address the issue of repair because he did not know what that figure was going to be as of yet (TR930/L08).

In addressing Mr. Biddy's statement that he believes the maintenance budget is excessive as the equipment manufacturers of the new equipment must warranty their equipment for one year after startup, Mr. Porter noted that manufacturer's warranties apply only to the repair of defects in materials and workmanship and that they do not apply to: normal operations; preventative maintenance; the purchase of necessary spare parts; equipment repair due to normal operation; updates to the process computer controller programming; electronic control equipment service contracts; master computer system software upgrades; replacement of controls and equipment damaged by lightning; electrical generator diesel motor maintenance; electric generator power system maintenance contracts; etc. (TR914/L19). Mr. Porter specifically noted that the system must be 100% reliable as required by DEP Rule 62-610 and that this system required a great deal of preventative maintenance to maintain that 100% reliability (TR915/L07). In Mr. Porter's opinion, the cost estimate for maintenance is appropriate, if not understated, and none of these costs will be diminished or offset by manufacturer's warranty provisions (TR915/L10). Mr. Porter also testified that his estimate, representing 5% of the value of the new equipment, was a figure that he had used (and the Commission accepted) in previous rate cases and was also one based on his experience (TR211/L17). Mr. Porter also recalled that that percentage was one initially used by EPA in published documents related to operation and maintenance costs that would be associated with facilities built under the 201 program (TR211/L22).

Mr. Nixon noted that the adjustment which reflected elimination of all maintenance associated with operation of the new facility was made by Mr. Larkin because Mr. Biddy had testified that "the manufacturer will guarantee the proper functioning of its installed equipment for a period of one year" (TR776/L24). It was Mr. Nixon's opinion that Mr. Biddy and Mr. Larkin had confused the manufacturer's warranty on equipment failure (structural defects, imperfections, etc.)

with the cost of routine maintenance necessary for proper functioning of the equipment (TR777/L04). Mr. Nixon testified that no manufacturer can guarantee equipment that is not properly cared for under a routine maintenance protocol, and that this would be no different than an auto manufacturer voiding his guarantee for improper maintenance (TR777/L07). Mr. Nixon considered it incredible that OPC's witnesses were assuming a manufacturer would pay for all maintenance just because the equipment is guaranteed for one year (TR777/L12).

In fact, to the extent Mr. Larkin's testimony was founded upon the opinions of Mr. Biddy (as they were), then those opinions should be given little weight by this Commission. Mr. Biddy acknowledged that he has neither designed nor permitted any facility that had reuse as a method of effluent disposal (TR420/L09). Mr. Biddy also acknowledged that he had never personally participated in the startup and ongoing operation and maintenance of a new wastewater treatment plant the size of Aloha's (TR483/L16). Mr. Biddy agreed that manufacturer's warranties do not cover preventative maintenance(TR487/L13)and also acknowledgedthat equipment manufacturer's warranties are finished, once you get through startup, except for defects (TR484/L08).

Not only did the testimony of Mr. Nixon and Mr. Porter strongly support the projected maintenance expense for the new plant, but Mr. Larkin relied completely on Mr. Biddy for his proposed adjustment to that projected maintenance expense and his reliance was clearly misplaced. Mr. Biddy utterly failed to provide any credible source or foundation for his opinions regarding adjustment to projected maintenance expense. Mr. Biddy's testimony cannot possibly form the foundation for an adjustment to projected maintenance expense, particularly when the record reflects the reasoned testimony of Mr. Porter based on his application of an accepted projected maintenance expense percentage which he had utilized for 25 years and which has been accepted previously by this Commission.

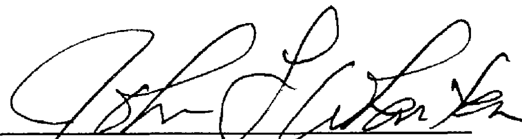
11. It is surprising for OPC to suggest that the Commission's Order somehow "shifts the burden" to OPC on this issue in the face of this plethora of evidence. The fact that all of the credible

evidence on this issue came from Aloha, and that none of the credible evidence on this issue came from OPC, does not represent a "shifting of the burden". Rather, it is nothing more than the Commission properly determining that one side has carried its position on this issue through the presentation of competent and substantial evidence.

12. Both of the issues on which OPC has moved for reconsideration are issues which were the subject of expert testimony, which were the subject of cross-examination by the Commission Staff and OPC, and which the parties were provided an opportunity to argue in their briefs. The Commission's conclusion, in each case, was based upon the proper application of the evidence in the case to the issue as presented. OPC's motion does not identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order on either of these issues.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that OPC's Motion for Reconsideration be denied in its entirety.

Dated this 5th day of March, 2001.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to OPC's Motion for Reconsideration has been furnished by Hand Delivery to the following parties this 5th day of March, 2001:

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