



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: September 11, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Holley) *JAM*
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.

Please file the attached letter dated September 7, 2002, and the e-mail in response thereto dated September 11, 2002, in the docket file for the above-referenced docket.

LAH/dm

cc: Division of Economic Regulation (Walden, Willis)
Division of Consumer Affairs (Lowrey)

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1822 Orchardgrove Avenue,
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727 376-9747

Lorena Holley, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
TALLAHASSEE, FL 32399-0873



September 7, 2002

RE: MOTION TO DISMISS FILED BY ALOHA
DOCKET NO 020896-WS

Dear Atty Holley,

I received today a copy of the motion to dismiss filed on behalf of Aloha Utilities by Attys Deterding and Wharton. I will try to file a 'rebuttal' after I get some clarification from you about some legal aspects.

The brief essentially relies on the premise put forward by Aloha attorneys that the PSC has "no general authority to regulate public utilities". However, let me quote from Atty Ralph Jaeger's letter to me of May 15:

["Finally, in your letter you ask, "which governmental agency holds the authority to issue or revoke the monopoly status of Aloha Utilities?" Pursuant to Chapter 367, Florida Statutes, the Commission has "exclusive jurisdiction over each utility with respect to its authority, service and rates". That includes the granting of a certificate and *setting its service territory*" (emphasis mine)]

If Atty Jaeger's interpretation of Florida Statues, Chapter 367 is correct, then the request to dismiss from Aloha's attorneys is moot. So it is up to PSC to settle this legal argument.

Now to come to the other points.

1. At the time that our petition was submitted, the stay order PSC -02-1956-PCO-WU was not in effect. I do not understand the claim that it "was filed prematurely, and the time for filing such motions having passed, the petition is untimely". How can the petition be 'filed prematurely' and 'untimely' at the same time, unless it is some legal nicety to avoid the issue? Please comment.

2. The request for an independent audit, for the Action Plan to "contain the minimum requirements adopted by neighboring Utilities for raw water processing" and for a "Citizens Advisory Committee to monitor the effectiveness of any plan that is

accepted” arises from the acknowledgement by FDEP that “Aloha might be using inadequate methodology is correct”. Please see the enclosed letter from Mr Van Hoofnagle, dated July 3.

Aloha has consistently refused to accept any interpretation of facts other than that of its water engineer and legal team. On the one hand the Utility claims that it meets the Federal EPA and FDEP standards and then refuses to accept the verdict of FDEP that the Utility uses inadequate methodology. Some authority in the State has to mandate a *conflict free independent audit*, so when an action plan is adopted it would not be a waste of money if it does not achieve the goal of eliminating ‘black water and associated problems’ due to inadequate methodology and inappropriate physical plant. Who is that authority? The FDEP has so far refused to acknowledge any authority in this area. Who will monitor whether the Action Plan is adequate? Does the PSC have a staff of water engineers who will approve it and supervise compliance, or will it be left to the FDEP, which has previously refused to monitor water parameters without giving 24hour notice to Aloha?


As far as the institution of the Citizens’ Advisory Committee is concerned, the PSC in its stay Order PSC 02-1956-PCO-WU specifically excluded Aloha’s plea to delay implementation of this part of the initial orders of April 30, 2002.

Finally, Florida statutes Section 367.111 (1) as quoted by Aloha’s attorneys themselves in the motion submitted authorizes the PSC “ to amend the certificate of authorization to delete an area served *or not properly served by the utility* or it may rescind the certificate of authorization”.

Evidence has been provided over a period of 12 years that the Seven Springs Area *has not been properly served by the Utility* and the PSC has found that Aloha has not met the “competitive standard” that can be reasonably expected of a monopoly utility.

Please send me a copy of your reply by e-mail, akurien@attglobal.net so we do not lose precious time, if there is a time line we have to meet to file a rebuttal.

Yours sincerely,


V. Abraham Kurien





Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
July 3, 2002

David B. Struhs
Secretary

Dr. V. Abraham Kurien, M.D.
1822 Orchard Grove Avenue
New Port Richey, Florida 34655-4716

Dear Dr. Kurien:

I have received your letter of June 20, 2002. Your observation that Aloha might be using inadequate methodology is correct. Unfortunately the oxidation of hydrogen sulfide to sulfur and sulfate with chlorine is not an irreversible process. Under the proper conditions, sulfur bacteria will convert the sulfates back to hydrogen sulfide. This phenomenon is common and frequent with water systems in Florida that use this method of treatment to deal with hydrogen sulfide.

The most effective method of treating for hydrogen sulfide is to remove it. Enclosed is a diagram of the Sulfide Species Distribution vs. pH. H_2S is volatile while HS^- and S^{2-} are not. The accepted practice is to lower the pH of the raw water to 6.0 to 6.5 so that 80-90% of the species is in the H_2S form and then aerate the water. That process takes out both the H_2S and a significant portion of the alkalinity as CO_2 . Additional treatment is then required to raise the pH back to around 7.5 and replace the alkalinity that is needed to stabilize the water.

Aloha has stated that the company is willing to invest in the additional treatment as long as the Public Service Commission (PSC) will guarantee it a rate increase. The customers of Aloha have told the PSC on numerous occasions that they are not willing to pay higher rates, and the PSC has declined to guarantee additional rates. As a medical doctor, you can appreciate that additional, advanced treatment cannot be provided free of charge.

Your understanding of the chemical process is correct. Chlorination will reduce the pH of the water, and this very well could account for the lower pHs that we have seen. I should point out, however, that the generation of hydrogen sulfide is a natural process caused by anaerobic bacteria. As a result, amount of H_2S appearing in raw well water can vary significantly on a day-to-day basis. That said however, it certainly is desirable to have a constant pH in the range of 7.3 to 7.6. Our Tampa office will continue to investigate. We will see if there is any action we can take under other rules, like the Lead and Copper Rule, to require Aloha to stabilize the water to a more consistent level.

You inquired about the possibility of Aloha superchlorinating the water. I think that is very unlikely. Superchlorination is not a treatment technique normally used by groundwater treatment plants. Occasionally surface water treatment plants will superchlorinate to deal with

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Dr. V. Abraham Kurien
July 3, 2002
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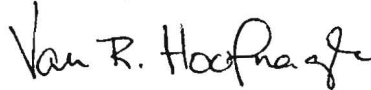
severe tastes and odors caused by algae and other organics. The chlorine is usually injected at the beginning of treatment. Excess chlorine is then removed prior to filtration using activated carbon.

However, the state does require by rule that water systems maintain a minimum of 0.2 mg/L free chlorine at all points in the distribution system. In order to obtain that level of free chlorine, the water system must practice what we call breakpoint chlorination. I have include two pages from a US EPA reference on breakpoint chlorination.

In addition, I have reproduced a few other articles from my files on hydrogen sulfide that you might find interesting. Thank you for your interest in this problem.

If you have any questions or concerns, please call me at 487-1762.

Sincerely,



Van Hoofnagle, Administrator
Florida Drinking Water Program
Florida Department of Environmental Protection

VH/bwfr/m

cc: Richard Drew

Enclosure

Lorena Holley

From: Lorena Holley
Sent: Wednesday, September 11, 2002 5:43 PM
To: 'akurien@attglobal.net'
Cc: 'martyd@rsbattorneys.com'; 'johnw@rsbattorneys.com'; Lorena Holley
Subject: DN 020896-WS

Dear Dr. Kurien:

I received your letter dated September 7, 2002, regarding Docket No. 020896-WS. I have forwarded a copy of your letter, as well as a copy of this e-mail to the Commission's Division of the Commission Clerk and Administrative Services for its inclusion in the docket. In the future, if it is at all possible, please send of a copy of any correspondence or filings associated with this docket to the other parties and interested persons listed under this docket. This information can be obtained through the Commission's website, and by referencing the docket number. That will ensure that all parties and interested persons are kept informed.

As to your request regarding clarification of some legal aspects, unfortunately, I am unable to assist you in this manner. In my capacity as an attorney for the Public Service Commission, it is my responsibility to represent the Commission and the Commissioners, as well as provide them with legal advice and clarification. Because those Commissioners act as the decision-makers on petitions such as the one that is the subject of this docket, it would be inappropriate for me to provide you with legal advice while at the same time provide the Commission with legal advice as well.

Perhaps you may want to raise the concerns that you identify in your letter in your response to Aloha's Motion to Dismiss. The Commissioners would then be apprized of these points when they rule on Aloha's Motion.

As always, I am available to discuss the procedural aspects of this case. If I can be of further assistance, please do not hesitate to contact me by phone or e-mail.

Sincerely,
Lorena A. Holley
Senior Attorney