

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: FEBRUARY 5, 2004

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

FROM: OFFICE OF THE GENERAL COUNSEL (GERVASI) *Walter*
DIVISION OF ECONOMIC REGULATION (WALDEN WILLIS) *PO*
DIVISION OF CONSUMER AFFAIRS (LOWERY) *M*

JDJ TJS

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: 02/17/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

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 located in Pasco County. The utility consists of two distinct service areas; Aloha Gardens and Seven Springs. 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, accompanied by a Petition signed by 1,491 residents from 1,314 households located in a portion of the utility's Seven Springs service area. This docket was established in order to consider the issues raised in the petition.

The Petition requests that the Commission order an independent audit of Aloha's processing plant and methodology, and, if water quality does not improve by a date certain, that the portion of the Seven Springs service area where these customers reside be deleted from Aloha's overall service territory. The Office of Public

DOCUMENT NUMBER-DATE

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Counsel (OPC) has independently volunteered to conduct and finance the audit requested by the customers.

On September 11, 2002, 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 Mr. Edward O. Wood's (Mr. Wood) 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 parties, and no response was received. Thus, by Order No. PSC-02-1504-PCO-WS, issued November 4, 2002, Mr. Wood was granted Intervenor status.

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

By Order No. PSC-02-1722-PCO-WS, issued December 9, 2002, the Commission ordered that the 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 rendered a decision on Aloha's appeal of the Commission's Final Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU (In Re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.).¹ The Order further directed that staff file a Motion to Expedite Aloha's appeal before the First DCA. Many of the issues raised in the Petition relate to the rate case docket (Docket No. 010503-WU). On May 6, 2003, the First District Court of Appeal *per curiam* affirmed the Commission's Final Order in Docket No. 010503-WS. The Court's Mandate issued on June 30, 2003.²

¹On May 28, 2002, Aloha filed its timely Notice of Appeal of the Final Order, and on June 14, 2002, Aloha filed its Motion for Stay. Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, granted in part and denied in part Aloha's Motion for Stay.

²On December 18, 2002, and December 20, 2002, respectively, the Commission received letters from Mr. Wood and Dr. Kurien,

By letter dated October 1, 2003, and filed October 3, 2003, Dr. Kurien requested that the Commission expeditiously move towards a hearing on the Petition. Attached to the letter is a resolution for Commission action by Aloha's Citizens Advisory Committee (CAC), stating that discussions between Aloha and the CAC have reached an impasse.

On December 2, 2003, OPC filed a second Notice of Intervention in the docket, to support the petitioners in the preparation and presentation of their case. On December 3, 2003, OPC filed a Motion to Remove Docket from State of Abeyance, stating that because the results of the independent audit are now imminent, procedures should be scheduled for a hearing on the issues presented by the petitioners. On December 12, 2003, Aloha filed a Response in opposition to the Motion.

In addition, by letter dated November 17, 2003, and filed December 11, 2003, four legislators who represent Pasco County "request and demand that the Commission take this docket out of its state of abeyance and schedule a public hearing in the New Port Richey/Trinity area" in the near future.

Finally, on December 29, 2003, a second customer Petition was filed, signed by 218 Aloha customers located in Riverside Villas, which is also located in Aloha's Seven Springs service area. These petitioners also seek deletion of their service territory. On January 20, 2004, Aloha filed a Supplemental Motion to Dismiss this most recent Petition.

This recommendation addresses the requests to remove the docket from abeyance. The Commission has jurisdiction pursuant to Sections 367.045 and 367.121, Florida Statutes.

requesting reconsideration of Order No. PSC-02-1722-PCO-WS. By Order No. PSC-03-0325-FOF-WS, issued March 6, 2003, the requests for reconsideration were denied.

DISCUSSION OF ISSUES

ISSUE 1: Should the requests to remove this docket from abeyance be granted and a public hearing scheduled?

RECOMMENDATION: Yes, the requests to remove the docket from abeyance should be granted, and a customer service hearing on the audit report and the implications of its findings should be scheduled in Aloha's Seven Springs service area in the near future. Because the audit report and the implications of its findings may affect all customers in the Seven Springs service area, Aloha should be required to give written notice of the date, time, location, and purpose of the customer service hearing to each of its customers in the Seven Springs service area no less than fourteen days prior to the service hearing. The utility should be required to utilize first class mail for notices sent to customers with out of town mailing addresses. The notice should include a statement that any comments regarding the results of the audit report should be addressed to the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and that such comments should identify the docket number assigned to this proceeding. A ruling on the two customer Petitions and all other pending motions should be deferred until the audit report has been fully analyzed. Staff should be directed to fully analyze the findings of the audit report and the information gathered at the customer service hearing, and to thereafter file a recommendation concerning the disposition of the Petitions and pending motions. (GERVASI, WALDEN, WILLIS)

STAFF ANALYSIS: As explained in the case background, Dr. Kurien has requested that the Commission expeditiously move towards a hearing on the customers' Petition. Attached to his letter is a resolution for Commission action by Aloha's Citizens Advisory Committee (CAC), stating that discussions between Aloha and the CAC have reached an impasse. In addition, by letter, four legislators who represent Pasco County "request and demand that the Commission take this docket out of its state of abeyance and schedule a public hearing in the New Port Richey/Trinity area" in the near future. And OPC has filed a Motion to Remove Docket from State of Abeyance, stating that because the results of the independent audit are now imminent, procedures should be scheduled for a hearing on the issues presented by the petitioners.

DOCKET NO. 020896-WS
DATE: February 5, 2004

In its Motion, OPC states that because the First District Court of Appeal has rendered its decision on the Final Order on appeal in Docket No. 010503-WU, all subject matter of the customers' Petition now rests within the Commission's jurisdiction. During the period that this case has been in abeyance, Dr. Audrey Levine has performed an audit of Aloha's water quality. A report of her findings will be completed imminently. The petitioners seek a Commission hearing on the forthcoming audit report, and on the implications of its findings. OPC requests that the Commission remove the docket from abeyance and schedule appropriate procedures for a hearing.

In its Response to OPC's Motion, Aloha states that the original Petition which initiated this docket requests that the "plan of action" that Aloha had been asked to submit to the Commission, which Aloha previously filed in a timely fashion, only be accepted if it contained the minimum requirements adopted by "neighboring utilities," and that the Commission order Aloha to put "new minimum requirements" into effect for water. In the absence of this, the Petition requests that certain parts of Aloha's territory be deleted and made a "part of the service area of Pasco County Water Utility System." Aloha states that the relief requested in OPC's Motion does not appear to be consistent with the relief requested in the Petition.

Further, Aloha argues that Dr. Levine's audit report has not even been completed. According to Aloha, at a minimum, this matter should remain in abeyance until such time as the report has been issued and its contents studied, reviewed, and discussed between Aloha, the Commission staff, OPC, and the petitioning customers. Removing this case from its current state of abeyance will create a significant distraction from the consideration of Dr. Levine's not yet completed report, as such removal will immediately revive certain pending motions, as well as create a vehicle for discovery, depositions, further motions, and all other accouterments of litigation. According to Aloha, nothing has occurred to justify removing the docket from its current state of abeyance at this particular time.

The results of the independent audit conducted and financed by OPC are expected to be published on or around February 2, 2004. It is expected that the independent audit will recommend what improvements should be made to the processing plant and methodology

for the purpose of cleaning up the black water.³ All parties appear to be in agreement that the results of the independent audit will directly impact what improvements should be made to Aloha's processing plant and methodology.

Staff disagrees with Aloha that this docket should be held in abeyance until the audit report is issued and the contents of the report have been studied. The audit report is expected to be published in advance of the February 17, 2004, agenda conference, during which this recommendation will be addressed. The docket should be removed from abeyance in order for all parties and staff to move forward with their study and discussions of the audit report and its implications. Moreover, in the course of studying the audit report, staff believes that it would be beneficial to hear from customers in the service area concerning their views on the audit report and the implications of its findings, and the customers, OPC, and four legislators have expressed an interest in having a hearing on the matter.

Staff recommends that the docket be removed from abeyance in order to fully consider the audit report, not in order to set the matter directly for a full evidentiary hearing pursuant to Sections 367.569 and 367.157(1), Florida Statutes. Nor is it necessary to immediately revive the pending motions in the docket if the case is removed from abeyance. Instead, because the results of the audit report may directly impact the Petitions, staff recommends that the Commission should defer ruling on the two customer Petitions and on the pending motions responsive to them, until after all parties and staff have fully analyzed the audit report and a customer service hearing is conducted on its findings and recommendations.

For the foregoing reasons, staff recommends that the requests to remove the docket from abeyance should be granted, and a customer service hearing on the audit report and the implications of its findings should be scheduled in Aloha's Seven Springs service area in the near future. Because the audit report and the implications of its findings may affect all customers in the Seven Springs service area, Aloha should be required to give written notice of the date, time, location, and purpose of the customer

³By Final Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU, the Commission required Aloha to complete certain plant improvements.

DOCKET NO. 020896-WS
DATE: February 5, 2004

service hearing to each of its customers in the Seven Springs service area no less than fourteen days prior to the service hearing. The utility should be required to utilize first class mail for notices sent to customers with out of town mailing addresses. The notice should include a statement that any comments regarding the results of the audit report should be addressed to the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and that such comments should identify the docket number assigned to this proceeding. A ruling on the two customer petitions and all other pending motions should be deferred until the audit report has been fully analyzed. Staff should be directed to fully analyze the findings of the audit report and the information gathered at the customer service hearing, and to thereafter file a recommendation concerning the disposition of the petitions and pending motions.

DOCKET NO. 020896-WS
DATE: February 5, 2004

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open until the two customer petitions and all pending motions are resolved. (GERVASI)

STAFF ANALYSIS: This docket should remain open until the two customer petitions and all pending motions are resolved.