

024

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



GENERAL COUNSEL
RICHARD D. MELSON
(850) 413-6248

Public Service Commission

July 2, 2004

Via E-Mail and U.S. Mail

V. Abraham Kurien, M.D.
1822 Orchardgrove Avenue
New Port Richey, FL 34655

Re: Docket No. 020896-WU

Dear Dr. Kurien:

I am writing in response to your letter of June 30, 2004 which expressed concern about revisions to the staff recommendation that had been filed on June 17th in Docket No. 020896-WU.

As Mr. Tim Devlin, director of the Division of Economic Regulation, explained at the June 29th agenda conference, the revisions to the filed recommendation—which were circulated immediately before the agenda conference—reflected the agreed upon version of the draft recommendation that had been circulated and reviewed by division management on June 14th, prior to the June 17th filing date, and therefore prior to Aloha's June 24th response to the filed recommendation. The departure from normal procedures occurred when an approved recommendation was revised at the last minute before filing with no notice to technical supervisory staff of those changes.

On June 11, 2004, staff met to discuss the draft Aloha recommendation taking into account Aloha's June 9, 2004, petition to revise PSC rate case order number PSC-02-0593-FOF-WU. At that meeting, staff decided to recommend revising the order to adopt the Tampa Bay Water Authority (TBW) standard rather than the 98% standard contained in the order. Based on previous communication from the Community Action Coalition (CAC), staff believed at that time that the CAC did not object to revising the order to adopt the Tampa Bay standard. A final draft recommendation was distributed to all staff, including management, on June 14, 2004.

On June 16, 2004, the Office of Public Counsel (OPC) filed the Citizens' Answer to Aloha Motion to Modify the Requirements of Order Number PSC-02-0593-FOF-WU, which adopted by reference your letter on behalf of the CAC. That letter included your three qualifiers to the previous statement of the CAC. Two technical staff members and an attorney reviewed your letter and made significant changes to the June 14 draft without alerting managers in the Division of Economic Regulation that the draft recommendation had been revised from the version which had been agreed upon and circulated for management review on the previous Monday.

CMP
COM
CTR
ECR
GCL
OPC
MMS
RCA
SCR
SEC
OTH

DOCUMENT NO. 07293 JUL-20 PSC-COMMISSION CLERK

Dr. Kurien
July 2, 2004
Page 2

Because no notice was given that the recommendation had been revised at the last minute before filing, ECR management did not become aware of the changes until Aloha's June 24 letter was received and distributed on June 25. The ECR director called a meeting on June 28, 2004 to find out when, why, and by whom the original recommendation had been revised. During the meeting and discussion, it became clear that two technical staff members had acted unilaterally to make the changes without notifying anyone within the division, and with no technical supervisory review or approval. Further, when questioned about implementation of the recommended changes, the staff were unable to answer some basic questions about the feasibility or costs of implementation. It was decided at the meeting that the recommendation should be revised to the original agreed upon June 14th version, with one added change. Because your suggestions that testing should occur more frequently and closer to the delivery point to the customer clearly needed to be addressed, staff recommended that Aloha be ordered to provide data and information within 60 days on the feasibility and cost of more frequent testing at the point of delivery to customers.

We are preparing a data request that will specify what is expected of Aloha for the above mentioned filing. We will ensure that the data request includes information needed to thoroughly assess your suggestions. Based on the data and information received, the matter can be brought back to the Commissioners at a future agenda conference.

I would like to assure you that this agency is committed to safeguarding the due process rights of all parties to Commission proceedings. Although the need for a last minute revision to the previously filed recommendation was somewhat unusual, all parties were given an opportunity to address their positions on the underlying issue when the recommendation was considered by the Commission on June 29. Moreover, the Commission's order on this matter will be issued as proposed agency action, which offers any party the right to request an evidentiary hearing if they believe that such a forum is necessary to protect their substantial interests.

Yours truly,



Richard D. Melson
General Counsel

RDM:mee

cc: (via e-mail)
Chairman Braulio Baez
Commissioner J. Terry Deason
Commissioner Lila Jaber
Commissioner Rudy Bradley
Commissioner Charles Davidson
Senator Mike Fasano

Dr . Kurien
July 2, 2004
Page 3

Representative Tom Anderson
Representative Heather Fiorentino
Mr. Steve Burgess
Mr. Harold McLean
Mr. Ed Wood
Mr. Harry Hawcroft
Dr. John Gaul
Mr. Marshall Deterding
Mr. Wayne Forehand
Dr. Mary Bane
Mr. Tim Devlin
Ms. Blanca Bayó (for docket file)