

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ALOHA)
UTILITIES, INC. for an increase)
in water rates for its Seven)
Springs System in Pasco County,)
Florida.)
_____)

DOCKET NO. 010503-WU

ALOHA'S MOTION FOR SUMMARY FINAL ORDER

Aloha Utilities, Inc. ("Aloha" or "Utility"), by and through the undersigned counsel, and pursuant to Rule 28-106.204(4), Florida Administrative Code, hereby files this Motion for Summary Final Order and in support thereof would state and allege as follows:

1. On July 20, 2004, the Commission issued Order No. PSC-04-0712-PAA-WS proposing to modify the fourth ordering paragraph of Order No. PSC-02-0593-FOF-WU, issued April 30, 2002.

2. On August 9, 2004, V. Abraham Kurien, Harry Hawcroft, and Ed Wood filed a Petition Requesting Hearing protesting certain portions of Order No. PSC-04-0712-PAA-WS.

3. The seminal case regarding standing to participate in an administrative proceeding under our Administrative Procedure Act is *Agrico Chemical Company vs. Dept. of Environmental Regulation*, 478 So.2d 406 (2^d DCA 1981). In *Agrico*, the Court held that

we believe that before one can be considered to have a substantial interest in the outcome of the proceeding, he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing and 2)

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that his substantial injury is of type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

One of the three Petitioners in this case, Dr. Abraham Kurien, has conclusively demonstrated in a sworn deposition, which was taken on February 21, 2005, that he does not have a substantial interest in the outcome of this proceeding because he will not suffer injury in fact which is of sufficient immediacy to entitle him to this hearing. Dr. Kurien testified that he is no longer a customer of Aloha Utilities. Similarly, he testified that his former home, which is in Aloha's service area, has been sold to another individual.¹ The Commission must, given this uncontested sworn testimony, dismiss Dr. Kurien as a party in this proceeding.

4. The only way a party can establish any fact in an administrative proceeding under Chapter 120, Florida Statutes, is through the proper introduction of evidence. The staff, itself, has recently recognized this unquestionable truism when it stated that "(t)he final decision must be based solely upon the record adduced at hearing . . ." (§ 25, Motion to Quash Subpoenas and Motion for a Protective Order).

5. The Order Establishing Procedure in this case provides that "(e) ach party shall prefile, in writing, all testimony that it intends to sponsor". In this case, neither of the other two Petitioners in this case, Mr. Hawcroft or Mr. Wood, have prefiled testimony. The only way a party can establish that it has a substantial interest in an admin-

¹As soon as the testimony from that deposition is produced, the pertinent pages will be filed with the Commission. Attached hereto as Attachment "A" is Dr. Kurien's letter notifying Aloha as to the cessation of his utility service.

istrative proceeding such as this, under *Agrico*, is to establish through the introduction of testimony that they will suffer injury in fact. In this case, there is no such testimony that either Mr. Hawcroft or Mr. Wood will suffer injury in fact, and because they are parties to this proceeding who have not prefiled testimony, no such opportunity may be afforded to them. For this reason, the Commission should dismiss Mr. Hawcroft and Mr. Wood as Petitioners.

6. The only witness for the Petitioners is Dr. Kurien, who no longer properly may be considered a Petitioner. Accordingly, Dr. Kurien's testimony should be deemed to be a nullity as his participation in this case should be terminated. Dr. Kurien's substantial interest in these matters ended when he ceased to be a customer of Aloha.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Commission issue a Summary Final Order dismissing the Petitions in this case and reducing Order No. PSC-04-0712-PAA-WS to Final Agency Action.

Respectfully submitted this 1st
day of March, 2005, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax (*) and U.S. Mail this 1st day of March, 2005, to:

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