

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

DOCKET NO. 050018-WU
ORDER NO. PSC-05-0300-PCO-WU
ISSUED: March 18, 2005

ORDER ACKNOWLEDGING INTERVENTION

On January 10, 2005, pursuant to section 350.0611, Florida Statutes, the Citizens of the State of Florida, by and through Harold McLean, Public Counsel (OPC), served its Notice of Intervention in this docket. On January 24, 2005, Aloha Utilities, Inc. (Aloha or utility) timely filed its Objection to Request for Intervenor Status and Designation as a Party by the Office of Public Counsel, stating that OPC should be denied intervention in this matter.

In support of its objection, Aloha states that OPC's Notice of Intervention does not comply with Rules 28-106.205, 25-22.039, or 28-106.201(2), Florida Administrative Code, as the notice is not a petition and it fails to include allegations that demonstrate that OPC is entitled to participate in the proceeding. It further states that while the notice cites to section 350.0611, Florida Statutes, which authorizes OPC to provide legal representation to the public in Commission proceedings, the utility asserts that OPC's role in the docket would be redundant and inappropriate as the Commission has the burden to prosecute in this proceeding and the Commission will represent the customers who support the Commission's position.

Aloha also states that OPC's notice is premature. The utility asserts that Rules 28-106.205 and 25-22.039 contemplate intervention in a proceeding. It states that there is currently no proceeding in this docket in which to intervene.

Aloha further claims that OPC has no standing to intervene in this matter. The utility states that section 120.60(5) reflects that only the agency and the licensee can be parties to a license revocation proceeding. Aloha states that, as the licensee, only it can request a proceeding pursuant to section 120.60(5). The utility asserts that the "intervention of other parties, on the 'side' of the Commission and 'against' Aloha is improper and contrary to the spirit, intent and requirements of the Administrative Procedure Act."

On January 28, 2005, OPC filed its Response to Aloha's Objection to Public Counsel's Status as an Intervenor. Such a filing is not permitted under the Uniform Rules of Procedure, and thus, will not be considered.

Upon consideration of the arguments, I find that OPC is entitled to intervene in this matter. Section 350.0611(1) specifically states that OPC may "... appear, in the name of the state or its citizens, in any proceeding or action before the Commission" Aloha's argument

DOCUMENT NUMBER - DAT

02688 MAR 18 05

FPSC-COMMISSION OFFICE


that there is currently no proceeding in which to intervene is moot as Order No. PSC-05-0204-SC-WU (Show Cause Order) was served to the utility on February 22, 2005, and the utility requested a formal hearing on March 15, 2005. Accordingly, OPC's Notice of Intervention in this docket is hereby acknowledged.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Office of Public Counsel's Notice of Intervention is hereby acknowledged. It is further

ORDERED that all parties to this docket shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this docket to Harold McLean, Public Counsel, Office of the Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 18th day of March, 2005


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

ORDER NO. PSC-05-0300-PCO-WU

DOCKET NO. 050018-WU

PAGE 3

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.