

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

FILED: MARCH 18, 2005

RESPONSE TO ALOHA UTILITIES, INC.'S MOTION FOR ABATEMENT

The staff of the Florida Public Service Commission, by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files its Response to Aloha Utilities, Inc.'s (Aloha or utility) Motion for Abatement filed on March 15, 2005, and states that:

1. The staff takes no position as to whether the Motion should be granted. Staff offers the following observations for the Commission's consideration in ruling on the Motion.

2. The Commission's final order in Docket No. 010503-WU is currently scheduled to be issued on June 20, 2005. In its Motion, Aloha requests that the Commission abate this proceeding until that final order is issued. Once that final order is issued, Aloha requests that it be directed to confer with staff and report to the Prehearing Officer the status and posture of Docket Nos. 010503-WU and 050018-WU so that the Prehearing Officer may determine whether continued abatement is appropriate or necessary.

3. Abating the deletion proceeding has the benefit of providing Aloha with a strong incentive to work diligently to fully implement, on a system-wide basis, the treatment method it has chosen to combat the black water problem as soon as possible and before the abatement period ends. If the chosen treatment method is fully operational, and is successfully combating the problem before the Commission or Prehearing Officer determines whether continued

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abatement is appropriate or necessary, it could result in a finding at that time that the reactivation of this proceeding is unnecessary and much litigation time and expense on the part of all parties and the Commission would be saved.

4. Aloha has indicated that it will take up to one year to optimize its chosen treatment method, even after full implementation thereof. The length of time that optimization will take lessens the chances that the treatment method will be successfully combating the black water problem by the time the final order in Docket No. 010503-WU is issued, even if the treatment method is fully operational on a system-wide basis by that time. Nevertheless, the sooner Aloha implements this treatment method, the better.

5. Aloha argues that if, by final order in Docket No. 010503-WU, the Commission orders it to remove, rather than convert, the hydrogen sulfide, it may be impossible for the utility to obtain financing for the construction of any facilities needed to accomplish such removal while this proceeding is pending. This argument has merit. The hydrogen peroxide method results in conversion, rather than removal, of the hydrogen sulfide. Should the Commission order the removal of hydrogen sulfide, in order to comply with that order, Aloha will have to abandon its chosen treatment method in favor of aeration or some other treatment method which results in the removal of hydrogen sulfide, any one of which the utility has indicated would be much more expensive to implement than the chosen hydrogen peroxide method. Financial institutions may look unfavorably upon the fact that with the pendency of this proceeding, it is unknown how many ratepayers will remain in Aloha's service territory, making it difficult, at

best, to assess Aloha's ability to carry the loan. That uncertainty could add financial risk and therefore a higher interest rate, if indeed a loan is extended under such circumstances at all.

6. Should the Commission grant Aloha's Motion, this proceeding will still be pending, albeit in a temporarily inactive state. The very fact that this proceeding exists, whether currently active or inactive, could cause a higher degree of financial risk for Aloha in its effort to obtain a loan at a favorable interest rate. This observation weakens Aloha's argument in favor of abatement. Nevertheless, if this proceeding is inactive at the time Aloha seeks to secure a loan, presumably Aloha will be in a better posture to have such a loan approved than if the Motion is denied and this proceeding is active.

7. Staff agrees with Aloha that the final order to be issued in Docket No. 010503-WU could impact this proceeding and that the granting of Aloha's Motion will allow the Commission the opportunity to consider its decision in Docket No. 010503-WU in addressing this proceeding. Whether or not Aloha is in compliance with a final order regarding treatment of the black water problem to be issued in Docket No. 010503-WU obviously cannot be determined until after that order is issued, and may be a significant mitigating or aggravating circumstance for the Commission to consider in determining whether to delete territory or otherwise penalize Aloha in this proceeding.

8. This proceeding exists because numerous Aloha customers have experienced a black water problem for upwards of ten years. The customers want resolution of this proceeding sooner rather than later. They doubt Aloha's ability to combat the black water problem and they

wish to secure an alternate service provider as soon as possible. Abatement of this proceeding does not further that end.

WHEREFORE, the staff takes no position as to whether Aloha's Motion for Abatement should be granted, but respectfully submits the foregoing observations for the Commission's consideration in ruling on the matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rosanne Gervasi", is written over a light gray rectangular background.

ROSANNE GERVASI, Staff Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one true and correct copy of the Staff's Response to Aloha Utilities, Inc.'s Motion for Abatement, has been served by facsimile and U.S. Mail to Marshall Deterding and John Wharton, Esquires, Rose, Sundstrom and Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, and that a true and correct courtesy copy thereof has been furnished to the following by U. S. Mail this 18th day of March, 2005:

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