

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: JULY 1, 2005

RESPONSE TO CITIZENS' MOTION TO HOLD HEARING IN SERVICE TERRITORY

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 in opposition to the Citizens' Motion to Hold Hearing in Service Territory filed on June 24, 2005, and states that:

1. The hearing in this docket is indeed scheduled to be conducted in Tallahassee. The Citizens state that the Commission holds all of its water and wastewater rate hearings in or near the service territory of utilities seeking rate increases in order to consider the value and quality of the utility's service, as required by section 367.081, Florida Statutes. That is not entirely true. The Commission elicits customer testimony concerning quality of service in rate cases in one of two ways. The Commission either holds such rate hearings in or near the service territory, as the Citizens assert, in order to conduct one or more "service hearings" during the morning and/or evening of the "technical hearing," or holds one or more "service hearings" in or near the service territory and holds the "technical hearing" in Tallahassee. Either way, all such hearings are included in the record of the case.

2. The hearing to be conducted in this case is not a rate hearing. Therefore, section 367.081 does not apply in this case and there is no requirement under that section for the Commission to conduct the hearing or hold a service hearing in the service territory.

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3. The Citizens argue that in protested certificate amendment cases wherein a utility seeks to add or delete service territory from its certificate of authorization, section 367.045(4), Florida Statutes, requires the Commission to conduct the hearing "in or near the area for which application is made, if feasible." This is not a case in which the utility has applied to amend its certificate. Therefore, section 367.045(4) is equally inapplicable.

4. This case is a license revocation proceeding and as such, is governed by sections 120.60(5) and 367.045(6), Florida Statutes.¹ Those sections do not require the Commission to conduct the hearing in or near the service territory.

5. In a license revocation proceeding, the agency, in this case, the Commission, has the burden of proving that grounds exist which warrant the action proposed to be taken against the licensee.² The purpose of the hearing in this case is for the prosecutorial staff to prove its case against Aloha Utilities, Inc. (Aloha or utility). It is not necessary to take general customer testimony in this case. In order to meet its burden of proof, the staff is, among other things, planning to call a large number of witnesses, including a number of Aloha customers, all of whom have indicated that they are willing and able to attend the hearing in Tallahassee. Moreover, holding the hearing in the service area in a potentially highly charged atmosphere would not be helpful to staff in making its case. Tallahassee is a more conducive venue in which to conduct a tightly controlled and orderly hearing that will involve cross-examination by the parties of a large number of witnesses.

¹ See Order No. PSC-05-0076-FOF-WS, issued January 21, 2005, in Docket Nos. 020896-WS and 010503-WU, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County and In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

² Rule 28-j(7.004(2), Florida Administrative Code.

6. The Citizens argue that Rule 28-106.207(1), Florida Administrative Code, provides that "whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer." It is staff's understanding that Aloha also objects to the Citizens' Motion. Staff postulates that it is more convenient for Aloha, the party defending its interests in its certificate, as well as staff, the party bearing the burden of proof in the case, to hold the hearing in Tallahassee. It is not practicable to hold the hearing in the service area for the convenience of the intervenors.

WHEREFORE, for the foregoing reasons, Staff opposes the Citizens' Motion to Hold Hearing in Service Territory.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Staff's Response to the Citizens' Motion to Hold Hearing in Service Territory has been served by facsimile and U.S. Mail to Stephen C. Reilly, Esquire, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400, and that a true and correct copy thereof has been furnished to the following by U. S. Mail this 1st day of July, 2005:

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