

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ALOHA UTILITIES, INC.,

Petitioner/Appellant,
vs.

FPSC Docket No. 050183-WU

THE FLORIDA PUBLIC SERVICE
COMMISSION, ET. AL.

Respondents/Appellees.

AMENDED NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that ALOHA UTILITIES, INC., Petitioner/Appellant, appeals to the First District Court of Appeal, the attached Order of the Florida Public Service Commission, rendered June 6, 2005. The nature of the Order, attached to this Notice, is a Final Order compelling action by Petitioner/Appellant even though that order is entitled Order Initiating Investigation by the Florida Public Service Commission. This appeal is filed pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

Respectfully submitted this 6th day of July, 2005.



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DOCUMENT NUMBER-DATE

06329 JUL-6 05

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to the following on this 6th day of July, 2005:

Rosanne Gervasi, Esquire
General Counsel
Florida Public Service Commission
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Tallahassee, Florida 32399-0873

Natura Homeowners
Roslyn B. Wrona
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F. MARSHALL DETERDING
JOHN L. WHARTON

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request by homeowners for the Commission to initiate 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. 050183-WU
ORDER NO. PSC-05-0618-PCO-WU
ISSUED: June 6, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER INITIATING INVESTIGATION INTO REMAINDER OF SEVEN SPRINGS
WATER SERVICE TERRITORY

BY THE COMMISSION:

BACKGROUND

On January 7, 2005, in Docket No. 050018-WU, we issued a notice of intent to amend Aloha's Utilities, Inc.'s (Aloha or utility) certificate of authorization to delete the Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio (also known as Riverside Villas), and Riverside Village Unit 4 subdivisions from the utility's service territory. On February 22, 2005, Aloha was served Order No. PSC-05-0204-SC-WU (show cause order). The show cause order set forth, in accordance with section 120.60, Florida Statutes, and Rule 28-107.004, Florida Administrative Code, the statutory sections alleged to have been violated by Aloha which warrant the deletion of the above-named portions of its service area and the facts and conduct relied upon to establish the violations. On March 15, 2005, Aloha timely filed its response to the show cause order and requested a hearing.

On March 15, 2005, Aloha filed a Motion for Abatement, requesting that we abate the proceeding in Docket No. 050018-WU until the final order is issued in Docket No. 010503-WU. Docket No. 010503-WU pertains to the protest of Order No. PSC-04-0712-PAA-WS, addressing the measurement of the water quality at Aloha's facilities. By Order No. PSC-05-0549-PCO-WU, issued May 20, 2005, we denied Aloha's Motion for Abatement and a hearing will therefore be scheduled in the show cause docket.

Along with a letter dated January 27, 2005, Ms. Roslyn B. Wrona sent this Commission a petition signed by 51 of 64 homeowners who reside in the Natura subdivision, requesting that

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Natura be included in Docket No. 050018-WS, as an area to be deleted from Aloha's service territory so that it can be part of the Pasco County water system. That petition has been filed in the instant docket. By letter attached to the petition, Ms. Wrona states that:

Aloha has supplied water to our community, but it comes out blackish from our faucets and showerheads, with a very strong sulfur odor and a strong chlorine taste. In other words, it is unusable and undrinkable. Several of the homeowners have complaints of damaged and corroded water pipes and shortened lives for their appliances. The Natura subdivision is in the Seven Springs area of Aloha's service territory, off of Seven Springs Road and behind a subdivision called Natures Hideaway.

By letter dated February 2, 2005, staff counsel advised Ms. Wrona that the Commission's initiation of deletion proceedings in Docket No. 050018-WU relates to deletion of specified areas only, and that if the Natura subdivision is not located within one of those areas, it would not be possible to be included in the proceeding.

By letter dated February 8, 2005, Ms. Wrona responded by requesting that a new docket be opened on behalf of the homeowners in Natura, who wish to terminate Aloha as their water provider. In that letter, Ms. Wrona states that "Aloha has stonewalled any improvement for almost 10 years and we believe that the methods being proposed to clean up the water will be inadequate. We are also on wells number 8 and 9, as are the Seven Springs communities listed in your letter. As stated in our petition, the water comes out blackish from the faucets and showerheads, with a strong sulfur odor. These wells are not providing us with acceptable water."

By letter dated February 21, 2005, staff counsel explained that at its January 4, 2005, agenda conference, the Commission considered the scope of the service area to be included in the deletion proceeding, and, after discussion, declined to initiate deletion proceedings to include areas other than Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio (also known as Riverside Villas), and Riverside Village Unit 4. Further, staff counsel postulated that it would be premature to open another deletion of territory proceeding pending the outcome of Docket No. 050018-WU, since if the Commission determines that Aloha has not violated a statutory duty in that docket, or that the utility has violated a statutory duty but has since minimized the black water problem such that deletion of territory is unnecessary, it would be fruitless for the Commission to have initiated deletion proceedings to include other portions of Aloha's service territory for the same reasons that Docket No. 050018-WU was opened. Moreover, staff counsel advised Ms. Wrona that Aloha is in the process of implementing a hydrogen peroxide treatment method to combat the black water problem in the area, that the adequacy of the treatment process will not be known until after it is implemented and optimized, that staff's understanding is that the pilot project will include areas served by wells 8 and 9, and that Natura may therefore be one of the first areas to benefit from the new treatment process.

Ms. Wrona continues to request that the Commission consider the petition from Natura subdivision and open a new docket to determine whether the Natura area should be deleted from Aloha's service territory. Therefore, the instant docket was opened.

In addition to the request of Ms. Wrona, this Commission has received similar letters from approximately 250 of 584 homeowners in a subdivision known as Heritage Lake.¹ In each of those letters, the homeowners state that Heritage Lake "suffers the same complaints about the poor water quality as those named in [Docket No. 050018-WU]" and request that their area be included in any action to remove Aloha as their water supplier. Staff counsel responded to each of those letters, again advising that it is not possible for this Commission to expand the proceeding in Docket No. 050018-WU to include other portions of Aloha's service territory. Those letters, along with all responses from staff counsel, have been placed on the correspondence side of Docket No. 050018-WU.

Also in addition to the request of Ms. Wrona, along with a letter dated April 6, 2005, Robert L. and Patricia C. Nelson and Glenn L. and Sarah J. Barry sent this Commission a petition signed by approximately 165 of 255 homeowners who reside in the Veterans Villas subdivision, requesting that we take away Aloha's license to serve Veterans Villas.² That petition has been filed in the instant docket. The petition states that:

Over the years there have been numerous complaints about the poor quality of the water [supplied by Aloha]. Until now we had no choice but to pay and consume this water. However, due to the large number of dissatisfied customers attending hearing on this subject, their voices have been heard and we of Veterans Villas feel it would be beneficial for our community to disconnect from Aloha Utilities and become customers of Pasco County Utilities.

The letter attached to the petition requests that if Veterans Villas cannot be combined with similar deletion action, this Commission start another action to address deletion of the Veterans Villas area from Aloha's service territory. The letter also requests that if any areas are detached from Aloha, this Commission fully consider the effect that will have on the remaining customers both as to the quality and cost of the water.

Finally, on May 5, 2005, this Commission received a letter from Ms. Donna Vaurio, Chairman of the Committee for Better Water Now, stating, among other things, that the customers are against abatement of Docket No. 050018-WU and that "[d]eletion of territory, to be ordered by the PSC, appears to be the only reasonable solution to this water problem that has lasted more than a decade." Along with her letter is a petition signed by approximately 215 Aloha customers from the Wedgwood Village, Heritage Springs, Twin Lakes Village, Briar Patch, and Foxwood subdivisions. The petition states the following:

We, the undersigned, are customers of Aloha Water Utilities and want it known to the Florida Public Service Commission, the Florida State Legislature, the Florida Office of Public Counsel, and the Pasco Board of County Commissioners, that we

¹ According to the Property Appraiser's Subdivision listing page, there are a total of 584 properties in Heritage Lake.

² According to the Property Appraiser's Subdivision listing page, there are a total of 255 properties in Veterans Villas, with 72 properties in Phase I, 71 properties in Phase II, and 112 properties in Phase III of the subdivision.

want our names added to the list of over 1,400 customers, who have been labeled as the "disgruntled few", by the President of Aloha, Steve Watford. We are tired of black, stinky water, pinhole leaks, and the prevalent cavalier attitude from customer service. We want to be counted amongst those wishing we could escape from this despotic monopoly.

The petition and Ms. Vaurio's letter have been placed on the correspondence side of Docket No. 050018-WU.

The Natura subdivision is located approximately halfway between the Trinity and Villa del Rio subdivisions which are at issue in Docket No. 050018-WU. Heritage Lake is contiguous to, and just to the north of, Riverside Villas Unit 4, which is also at issue in Docket No. 050018-WU. Veterans Villas lies one to two miles north northeast of the Trinity area and is not contiguous to any of the areas at issue in Docket No. 050018-WU. All three subdivisions are located in the Seven Springs area of Aloha's service territory. Wedgwood Village, a 17-home subdivision, is located west of U.S. 19 and therefore may be located in Aloha Gardens. Heritage Springs and Foxwood, both containing approximately 1000 homes, are located in a portion of the Trinity petition area and in a portion of area served by Pasco County. Twin Lakes Village, a 32-home subdivision, and Briar Patch, a 300-home subdivision, do not appear to be located in any of the existing petitioning areas but may be in Seven Springs.

On April 21, 2005, Aloha filed a letter dated April 20, 2005, in opposition to the opening of the instant docket.

This Order addresses what action should be taken with respect to the requests by homeowners in the Natura, Heritage Lake, Veterans Villas, Wedgwood Village, Heritage Springs, Twin Lakes Village, Briar Patch, and Foxwood subdivisions for deletion of those areas from Aloha's service territory. We have jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

NEW PETITIONS

In its letter in opposition to the opening of the instant docket, Aloha argues that it is inappropriate for the Commission to initiate a proceeding against the utility to delete Natura or any additional areas outside those already considered under Docket No. 050018-WU for several reasons. Aloha argues that there is no finding by this Commission that the concerns of these customers are the same as those expressed in this Commission's Order in Docket No. 050018-WU. There is no logic to consolidating these with the other pending docket, because they involve different time frames, different parties, different areas, different facts and quite possibly, different issues. Moreover, Aloha argues that going forward with the existing dockets (Docket Nos. 050018-WU and 010503-WU) will allow the most expeditious consideration of the issues raised therein in an orderly fashion. Beginning new cases or bringing in new parties at this point in time only complicates and delays consideration of the underlying issues, to the extent there are some that are common to both cases.

Moreover, Aloha argues that customers do not start license revocation proceedings. This Commission must base a decision to initiate such a proceeding on its investigation, from which it concludes that revocation is or is not inappropriate. The Natura petition and letters written by Ms. Wrona do not bring new facts to the case upon which the Commission can make a decision on the specific areas that it would consider for deletion. The petition states no facts as a basis, but simply calls for the Commission to take this action. The only facts alleged therein are those of one individual who forwarded the petitions and cover letters to the Commission.

Finally, Aloha argues that we cannot make a decision to delete Natura or any additional areas outside those already considered under Docket No. 050018-WU without undermining the basis for the decision in Docket No. 050018-WU as to what were the appropriate areas for consideration of deletion.

We note that we considered the scope of the service area to be included in the deletion proceeding in Docket No. 050018-WU and, after discussion at the January 4, 2005 agenda conference, declined to initiate deletion proceedings to include areas other than Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio (also known as Riverside Villas), and Riverside Village Unit 4. The Office of Public Counsel (OPC) currently supports expansion of the docket. However, during the discussion at the January 4, 2005 agenda conference, OPC indicated that it did not object to limiting the scope of the deletion proceeding to only those four areas. The following quote is taken from that discussion:

COMMISSIONER DEASON: Okay. And maybe, if I could ask Mr. Beck, do you agree that that's what we should focus on going forward is those four specific areas?

MR. BECK: Yes. Commissioner, we gave thought to that ahead of time, and we're satisfied with going forth on those four discrete areas. I think logically if you see this as a management problem, it should include the entire Seven Springs area. But by focusing on these four discrete areas, you address the concerns of the customers who filed petitions. There's already been a significant amount of work done. For example, the survey was done of these four discrete areas, so it made sense to go forward, I think, with that. And that's satisfactory to us. If the Commission wished to go forward on the whole Seven Springs area, this would be the time to do it, and we would certainly support that as well.³

We believe it is important to note that unlike in the Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio (also known as Riverside Villas), and Riverside Village Unit 4 subdivisions that are the subject of the deletion proceeding initiated in Docket No. 050018-WU, customers in the Natura, Heritage Lake, Veterans Villas, Wedgwood Village, Twin Lakes Village, and Briar Patch subdivisions and in the other remaining portions of the Seven Springs service area have not been recently surveyed to determine how many of them

³ Transcript of January 4, 2005, agenda conference at 62, lines 23-25, through 63, lines 1-12.

actually have a black water problem at their premises.⁴ Moreover, in Docket No. 020896-WS, 19 customers from the areas that are the focus of Docket No. 050018-WU prefiled testimony indicating specific quality of service problems that they had with Aloha. No such prefiled testimony exists with respect to the Natura, Heritage Lake, Veterans Villas, Wedgwood Village, Twin Lakes Village, or Briar Patch areas.

We find that the statements made in the petitions and letters at issue may not, in and of themselves, provide a compelling case for this Commission to find probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, such that the initiation of a proceeding to impose a penalty in the form of territory deletion with respect to these areas is warranted at this time. The Natura petition merely states that Aloha's water certificate should be revoked so that the homeowners may become part of the Pasco County water utility system. In her January 27, 2005, letter attached to the petition, Ms. Wrona states that the water comes out blackish from faucets and showerheads, with a very strong sulfur odor and chlorine taste. The approximately 250 form letters received from customers of Heritage Lake state that they have suffered the same complaints about the poor water quality as those named in Docket No. 050018-WU. The Veterans Villas petition states that there have been numerous complaints over the years about the poor quality of water supplied by Aloha, and the letter attached to that petition states that there is a strong odor coming from the Aloha facility off of Seven Springs Boulevard. The letter from Ms. Vaurio states that "[d]eletion of territory, to be ordered by the PSC, appears to be the only reasonable solution to this water problem that has lasted more than a decade," and the petition signed by customers from the Wedgwood Village, Heritage Springs, Twin Lakes Village, Briar Patch, and Foxwood subdivisions states that they are "tired of black, stinky water, pinhole leaks, and the prevalent cavalier attitude from customer service." We are concerned that these statements alone may not provide us with sufficient facts upon which to base a decision on whether Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in these subdivisions that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest."

Further, we believe that it would be premature to initiate another deletion of territory proceeding at this time. The proceeding pending in Docket No. 050018-WU has just recently become fully active as a result of our decision to deny Aloha's motion to abate it. If we determine that Aloha has not violated a statutory duty in that docket, or that the utility has violated a statutory duty but has since minimized the black water problem such that deletion of territory is unnecessary, it would be fruitless for this Commission to have initiated deletion proceedings to include other portions of Aloha's service territory for the same reasons that Docket No. 050018-WU was opened. The hydrogen peroxide treatment method that Aloha is in the process of implementing to combat the black water problem is to be implemented throughout the Seven Springs water system. The adequacy of the treatment process will not be known until after it is fully implemented and optimized.

⁴ Heritage Springs and Foxwood may be areas contained within Trinity, and as such, may already be included in the deletion proceeding in Docket No. 050018-WU.

Based upon the foregoing, we hereby direct our staff to conduct an investigation into the areas at issue, as well as into the other remaining areas located within Aloha's Seven Springs service territory, including conducting a customer survey of these areas much like the survey conducted with respect to the areas at issue in Docket No. 050018-WU, to determine the extent of the black water problem in these areas. Staff is directed to bring a recommendation on whether another deletion proceeding should be initiated once the staff investigation is completed. Further, Aloha shall provide staff with the names and addresses of all of its water customers residing in the areas at issue and any other remaining areas in its Seven Springs service territory in order to facilitate the mailing of the staff survey.⁵

It will take a number of months for staff to conduct an investigation and tabulate the results of a survey. By then, much activity will have taken place in the deletion proceeding pending in Docket No. 050018-WU and staff will have a better understanding of whether it would be prudent to recommend that we should initiate another deletion of territory proceeding.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that our staff is directed to conduct an investigation into the Natura, Heritage Lake, Veterans Villas, Wedgwood Village, Twin Lakes Village, and Briar Patch subdivisions, as well as into the other remaining areas located within Aloha's Seven Springs service territory, including conducting a customer survey of these areas much like the survey conducted with respect to the areas at issue in Docket No. 050018-WU, to determine the extent of the black water problem in these areas. Staff is directed to bring a recommendation on whether another deletion proceeding should be initiated once the staff investigation is completed. It is further

ORDERED that Aloha Utilities, Inc. shall provide our staff with the names and addresses of all of its water customers residing in the areas at issue and any other remaining areas in its Seven Springs service territory in order to facilitate the mailing of the staff survey. It is further

ORDERED that this docket shall remain open.

⁵ We note that through discovery propounded in Docket No. 020896-WS (the now closed customer-initiated deletion petition docket), staff requested that Aloha provide a list of the names and addresses of the water customers located in the areas for which deletion of territory had been requested in that docket. Aloha objected to providing the information. Order No. PSC-04-1152-PCO-WS, issued November 19, 2004, in that docket granted staff's motion to compel Aloha to provide the information and denied Aloha's motion for protective order. Aloha filed a motion for reconsideration of that discovery order. However, by Order No. PSC-05-0076-FOF-WS, issued January 21, 2005, we found that our decision to terminate the proceeding rendered Aloha's motion for reconsideration of the discovery order moot. Staff obtained the names and addresses required for the mailing of the survey conducted in that docket from the Pasco County Property Appraiser's Office.

By ORDER of the Florida Public Service Commission this 6th day of June, 2005.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

RG

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.

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.