

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval) DOCKET NO. 950615-SU
of Reuse Project Plan and)
increase in wastewater rates in)
Pasco County by Aloha Utilities,)
Inc.)
_____)
In Re: Investigation of utility) DOCKET NO. 960545-WS
rates of Aloha Utilities, Inc.) ORDER NO. PSC-96-1095-PCO-SU
in Pasco County.) ISSUED: August 27, 1996
_____)

ORDER DENYING REQUESTS FOR ORAL ARGUMENT AND
DENYING MOTIONS TO STRIKE TESTIMONY

By Order No. PSC-96-0772-PCO-WS, all direct testimony of the intervenors was required to be prefiled on July 18, 1996. On that date, the Office of the Public Counsel (OPC) filed both its "Notice of Intervention" and the direct testimony of Kimberly H. Dismukes. Also, Representative Mike Fasano timely filed his testimony on this date.

On July 26, 1996, Aloha Utilities, Inc. (Aloha), filed a Motion to Strike Direct Testimony of Kimberly H. Dismukes and a separate Motion to Strike part of the testimony of Representative Fasano. Within the body of each of its motions to strike, Aloha has requested the opportunity to present oral argument, without stating how oral argument would aid the Commission. Rule 25-22.058(1), Florida Administrative Code, requires the request for oral argument to be on a separate document and to state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Having reviewed the motions and responses, it does not appear that oral argument would aid the Commission in comprehending and evaluating the issues, and, therefore, the requests for oral argument are denied.

In the motion to strike Ms. Dismukes' testimony, Aloha states that the petition of OPC for intervention did not comply with the provisions of Rules 25-22.039 and 25-22.036(7)(a), Florida Administrative Code. Aloha argues that the power to intervene does not mean that the required procedures for intervention need not be followed. In support of this argument, Aloha cites Aventura Hospital and Medical Center, et al. v. Agency for Health Care Administration and Citizens of the State of Florida, Case No. 96-1418RU. Also, Aloha notes that the order acknowledging intervention, Order No. 96-0956-PCO-WS was not issued until July 24, 1996, and that, therefore, the testimony of Ms. Dismukes was

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not sponsored by a "party". Aloha then argues that intervenors take the case as they find it, and that by the time intervention was granted, it was too late to prefile any testimony. Aloha argues that to allow the testimony of Ms. Dismukes to be filed under these conditions would violate its due process rights.

Aloha has further moved to strike that part of Representative Fasano's testimony which discusses the fact that Pasco County has decreased its bulk water rates to Aloha and that this should be taken into consideration in these dockets. Aloha argues that this testimony is completely irrelevant and has no probative value with regard to any issue in this proceeding.

On August 6, 1996, OPC filed the Citizen's Response to Motion to Strike in regards to the testimony of Kimberly H. Dismukes. Also, Petitioner's Response to Motion to Strike, in regards to the testimony of Representative Fasano, was filed on August 7, 1996.

In its responsive filing, OPC argues that this is actually an impermissible collateral attack on the order acknowledging intervention; that the acknowledgment of intervention is a ministerial function; and that, though the order was issued on July 24, 1996, the effective date of the intervention should be the date the notice was filed, or July 18, 1996. OPC also states that the order in the Aventura Hospital case, cited by Aloha, dealt with neither Commission rules nor Commission practice, and was therefore not controlling. Also, OPC argues that that order does not support Aloha's position. OPC notes that that order specifically found OPC's notice of intervention to be adequate and that further detail concerning OPC's position could be gained through discovery. OPC further argues that the motion to strike is premature because the testimony has not yet been offered into the record, and the filing of Ms. Dismukes' testimony on the due date does not in any way prejudice Aloha's due process rights.

Pursuant to Section 350.0611, Florida Statutes, the OPC has the authority to intervene as a matter of right. Further, the filing of Ms. Dismukes' testimony on the due date has in no way prejudiced or violated the due process rights of Aloha. OPC's position is amply set out in the testimony itself, and OPC filed its prehearing statement, as required by the Order Establishing Procedure, setting out its issues and positions, on August 12, 1996. Therefore, Aloha's motion to strike Ms. Dismukes' testimony is denied.

In regards to the testimony of Representative Fasano, the Petitioner argues that the Commission has a continuing mandate pursuant to Section 367.081, Florida Statutes, to set rates which

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are just, reasonable, compensatory, and not unduly discriminatory. Also, he notes that water rates may be increased in the reuse docket, and that Docket No. 960545-WS is entitled "an investigation of utility rates" and is not limited to just wastewater rates.

It is premature to determine whether there will be an adjustment to Aloha's water rates in either Docket No. 950615-SU or Docket No. 960545-WS. Therefore, the testimony on the rates charged by Pasco County to Aloha for purchased water could be relevant. Accordingly, Aloha's motion to strike this portion of Representative Fasano's testimony is denied.

Based on the foregoing, it is

ORDERED by Chairman Susan F. Clark, as Prehearing Officer, that the Motion to Strike Direct Testimony of Kimberly H. Dismukes and the Motion to Strike a portion of the testimony of Representative Mike Fasano, including their respective requests for oral argument, are denied.

By ORDER of Chairman Susan F. Clark, as Prehearing Officer, this 27TH day of August, 1996.



SUSAN F. CLARK, Chairman and
Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.