

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of utility ) DOCKET NO. 960545-WS  
rates of Aloha Utilities, Inc. ) ORDER NO. PSC-97-0549-FOF-WS  
in Pasco County ) ISSUED: May 13, 1997

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The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
SUSAN F. CLARK  
DIANE K. KIESLING

ORDER DENYING RECONSIDERATION ON THE DETERMINATION OF  
QUALITY OF SERVICE

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or Utility), is a class A water and wastewater utility located in Pasco County. The Utility consists of two distinct service areas -- Aloha Gardens and Seven Springs.

On June 1, 1995, Aloha filed a reuse project plan (consisting of three phases) and an application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. On December 28, 1995, we issued Proposed Agency Action (PAA) Order No. PSC-95-1605-FOF-SU authorizing recognition of only Phase I of the project in rate setting. In that PAA Order, we also allowed Aloha to implement the approved wastewater rates on a temporary basis subject to refund in the event of a protest.

On January 10, 1996, Representative Mike Fasano, a customer of the utility, filed a protest to the PAA Order and requested an administrative hearing on the reuse project plan. On April 30, 1996, Mr. James Goldberg, President of the Wyndtree Master Community Association, filed a petition signed by 262 customers within Aloha's Seven Springs service area requesting us to investigate the utility's rates and water quality. The petition and request were assigned Docket No. 960545-WS.

For the purposes of hearing, Dockets Nos. 960545-WS and 950615-SU were consolidated by Order No. PSC-96-0791-FOF-WS, issued on June 18, 1996. The hearing was held on September 9-10, 1996 in

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New Port Richey, and concluded on October 28, 1996 in Tallahassee. Briefs were filed by the parties on December 17, 1996.

After evaluation of the evidence, we issued Order No. PSC-97-0280-FOF-WS (Final Order) on March 12, 1997. On March 27, 1997, Aloha timely filed its Petition for Reconsideration (Petition). In its Petition, Aloha claims that we either made a mistake of fact or law in regards to three determinations in the Final Order.

The Office of Public Counsel (OPC) filed its timely Response to Motion for Reconsideration and Cross Motion for Reconsideration on April 8, 1997 (Response and Cross Motion). Aloha's Petition raised three separate issues, and the OPC responded to each of these issues. However, this order addresses only the quality of service issue raised in Aloha's Petition and addressed in OPC's Response. The other two issues and OPC's Cross Motion all address the reuse docket and will be considered at a later date.

#### RECONSIDERATION ON QUALITY OF SERVICE

As stated above, Aloha has requested that we reconsider our decision that the quality of water service provided by Aloha is unsatisfactory. The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962). In Diamond Cab, the Court held that the purpose of a petition for reconsideration is to bring to an agency's attention a point of fact or law which was overlooked or which the agency failed to consider when it rendered its order. In Stewart Bonded Warehouse v. Bevis, 294 So. 2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. See also, Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). We have applied this standard in considering Aloha's Petition on the quality of service issue.

Aloha claims that our finding that its quality of service is not satisfactory is not supported by any competent substantial evidence and that the Order specifically references evidence not of record while ignoring competent evidence of record. In its Petition, Aloha specifically addresses the evidence presented on pressure, odor and taste, corrosiveness, handling of customer complaints, the "black water" problem (copper sulfide), and our consideration of customer letters not in the record.

OPC responds that the motion for reconsideration still shows the utility to be in denial regarding the quality of its water product. OPC adds that the record "is among the most, if not the most, complete record in Commission history regarding quality of

service, or in this case, lack thereof." OPC attached its summary of the customer testimony as evidence of Aloha's unsatisfactory quality of service.

In its petition, Aloha first alleges that we failed to consider the testimony of Department of Environmental Protection (DEP) witness Screnock or the two engineering studies about pressure which indicate that the utility is maintaining the required minimum 20 psi pressure in its system. Our Final Order (at page 12), however, discusses Mr. Screnock's testimony on pressure as well as the engineering studies.

Aloha next states that we failed to consider evidence about the water's odor. Specifically, Aloha claims that we did not consider the fact that Aloha is meeting DEP's requirements for all standards except copper. Aloha adds that we also failed to consider Mr. Porter's explanation that the home treatment units may be causing the odor complaints. The Final Order (at pages 10-12), however, discusses both the fact that Aloha is currently in compliance with DEP's rules and regulations and Mr. Porter's explanation of the problems which home treatment units may cause.

Aloha also states that only one customer expressed concerns about damage caused by corrosion to copper piping. Aloha adds that our rules only require that Aloha is responsible for the delivery of water up to the point of delivery into the piping of the customer and the utility is taking appropriate action with regard to this issue. However, we note that Aloha failed its initial Lead and Copper tests, and this is evidence that the water was corrosive and could damage copper piping.

Aloha claims that there is no evidence which supports a finding that the Utility has failed to properly respond to customer complaints or that the Utility has done anything other than maintain records in accordance with our rule concerning customer complaints. However, we note that there was customer testimony which indicated that they were dissatisfied with the way their complaints were handled by Aloha, that Aloha's employees had a poor attitude, and many customers testified that Aloha would tell them that they were the only ones who were complaining about water quality problems. Further, despite the numerous complaints which it has received about its water quality, Aloha has not had any of its engineering consultants analyze or prepare a report about water quality during the past five years.

Aloha next claims that the only competent substantial evidence of record about the black-water (copper sulfide) problem is that Aloha has implemented a corrosion control plan to address this

problem in less than three months and that the measures taken are standard operating procedures. Once again, many customers testified about black water and we find that we did consider all of the evidence on this issue in making our decision about the quality of service.

Finally, Aloha states that the 250 letters placed in the correspondence file were never made a part of the record and cannot form a basis for our findings even in part. Aloha alleges that these letters were plainly solicited to be sent to Representative Fasano and even after repeated attempts and requests for copies of same by Aloha on the record, they have never been forwarded to Aloha for proper follow-up or response. Our staff included this information in the recommendation in response to a commissioner's request. The letters, which our staff reviewed, are located within the Division of Records and Reporting and have been and are currently available for Aloha's review at any time during the Commission's normal working hours. We did not rely on these letters to reach any conclusion on quality of service. Rather, as OPC notes, the customer testimony at the formal hearing was more than adequate evidence for us to reach the conclusion that the quality of water service provided by Aloha was unsatisfactory.

Based upon the above, we find that Aloha's Petition merely reargues the case and Aloha has failed to show that we made any mistake or overlooked any fact or law. Therefore, Aloha's Petition for Reconsideration on quality of service shall be denied.

CLOSING OF DOCKET

Pursuant to Order No. PSC-97-0280-FOF-WS, this docket is to remain open pending further investigation on the quality of service. Therefore, this docket shall remain open pending completion of that investigation.

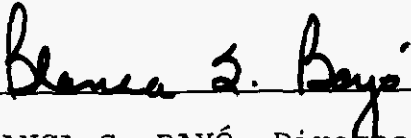
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the portion of the Petition for Reconsideration of Aloha Utilities, Inc., concerning this Commission's decision on quality of service is denied. It is further

ORDERED that this docket shall remain open pursuant to Order No. PSC-97-0280-FOF-WS.

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By ORDER of the Florida Public Service Commission, this 13th  
day of May, 1997.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.