

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of utility
rates of Aloha Utilities, Inc.
in Pasco County.

DOCKET NO. 960545-WS
ORDER NO. PSC-00-0585-PHO-WS
ISSUED: March 23, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, Prehearing Conferences were held on November 15, 1999, and March 22, 2000, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

F. MARSHALL DETERDING, ESQUIRE, Rose, Sundstrom and Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301
On behalf of Aloha Utilities, Inc.

HAROLD MCLEAN, ESQUIRE, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida and Representative Mike Fasano.

RALPH R. JAEGER and JASON FUDGE, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas -- Aloha Gardens and Seven Springs. As of December 31, 1997, Aloha was serving approximately 8,457 water customers in its Seven Springs service area.

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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 that the Commission investigate the utility's rates and water quality. The petition and request were assigned Docket No. 960545-WS.

For the purposes of hearing, Docket No. 960545-WS was consolidated with Docket No. 950615-SU (Aloha's reuse case). The hearing was held on September 9-10, 1996 in New Port Richey, and concluded on October 28, 1996 in Tallahassee. Customer testimony concerning quality of service was taken on September 9, 1996. Both customer testimony sessions were attended by more than 500 customers, fifty-six of whom provided testimony about the following quality of service problems: black water, pressure, odor, and customer service related problems. The customers also provided many samples of black water.

After evaluation of the evidence taken during the hearing, the Commission rendered its final decision by Order No. PSC-97-0280-FOF-WS (Final Order), issued on March 12, 1997. In that Order, the Commission determined that the quality of service provided by Aloha's water system was unsatisfactory. The Commission ordered Aloha to prepare a report that evaluated the costs and efficiencies of several different treatment options for the removal of hydrogen sulfide from its source water. In addition to finding the quality of the utility's water to be unsatisfactory, the Commission found that "the utility's attempts to address customer satisfaction and its responses to customer complaints are unsatisfactory. These management practices of Aloha concern us, and will be further addressed in Docket No. 960545-WS, which is to be kept open."

On June 12, 1997, Aloha filed its engineering report, recommending that it be allowed to continue adjusting the corrosion inhibitor dosage level in an ongoing effort to eliminate the black water problem. Aloha also recommended that if hydrogen sulfide treatment facilities were required, then the option of constructing three central water treatment plants which utilize packed tower aeration should be approved. Aloha estimated that construction and operation of the three treatment plants and other water system upgrades would increase customer rates by 398 percent.

On November 26, 1997, by Order No. PSC-97-1512-FOF-WS, the Commission decided that more investigation was needed and ordered the utility to survey its Seven Springs customers to determine the

extent of the quality of service problems and to determine if the customers were willing to pay for new treatment facilities that were not required by any current Department of Environmental Protection (DEP) or Environmental Protection Agency (EPA) rule and which would increase their water rates. Aloha distributed 8,597 surveys and the Commission received 3,706 responses. Also, as a follow-up to the survey, the Commission conducted a site survey on July 17, 1998.

In a June 5, 1998 letter to the Commission, Aloha stated that it was willing to begin construction of three centrally located packed tower aeration treatment facilities to remove hydrogen sulfide from the source water. Aloha was willing to proceed with this upgrade in order to address customer quality of service concerns and to comply with future EPA regulations. However, before commencing construction of these water treatment facilities, Aloha requested that the Commission issue an order declaring that it was prudent for Aloha to construct these facilities.

This request was considered at the December 15, 1998 Agenda Conference. Also, the Commission considered whether there was a water quality problem in Aloha's Seven Springs service area and, if so, what further actions were required.

Pursuant to the decisions at that agenda conference, on January 7, 1999, the Commission issued Order No. PSC-99-0061-FOF-WS, entitled Notice of Proposed Agency Action Order Determining That the Commission Should Take No Further Actions in Regards to Quality of Service in This Docket and Closing Docket and Final Order Denying the Utility's Request That the Commission Issue an Order Declaring it to Be Prudent to Begin Construction of Three Central Water Treatment Facilities (PAA Order). By that Order, the Commission required any protests to be filed by January 28, 1999 in order to be timely.

Subsequently, three customers -- Edward O. Wood, James Goldberg, and Representative Mike Fasano, filed timely protests to the PAA portions of Order No. PSC-99-0061-FOF-WS, and requested a formal hearing. Based on these protests, a formal hearing was scheduled for September 30, and October 1, 1999.

With the scheduling of a formal hearing, an Order Establishing Procedure, Order No. PSC-99-0514-PCO-WS, was issued on March 12, 1999. That Order required Aloha to prefile its direct testimony

and exhibits on June 30, 1999, and the intervenors to file their direct testimony and exhibits on July 13, 1999.

On March 22 and March 23, 1999, respectively, Aloha filed a Motion for Reconsideration of Order No. PSC-99-0514-PCO-WS and a Motion to Correct Scrivener's Error. In the Motion for Reconsideration, the utility requested the prehearing officer to reconsider the Order Establishing Procedure. In its Motion to Correct Scrivener's Error, the utility explained that its Motion for Reconsideration was erroneous in that it really was requesting the full Commission to consider the Motion for Reconsideration. By our staff having brought the Motion for Reconsideration before the full panel, the Motion to Correct Scrivener's Error became moot. On March 30, 1999, the Office of Public Counsel (OPC) filed a Response to Aloha Utilities, Inc.'s Motion for Reconsideration of Order No. PSC-99-0514-PCO-WS.

On April 22, 1999, our staff filed its recommendation on the utility's Motion for Reconsideration. This recommendation was to have been considered at the May 4, 1999 Agenda Conference. However, on April 30, 1999, the utility filed its Motion to Establish the Burden. Arguing that the Motion for Reconsideration and the Motion to Establish the Burden were interrelated, and requesting time to respond to the latter motion, the OPC orally requested that the item be deferred from the May 4 Agenda Conference. This request was granted by the Chairman on May 3, 1999.

On May 12, 1999, the OPC filed its response. However, on May 14, 1999, the utility moved to strike OPC's response as untimely. In Order No. PSC-99-1233-PCO-WS, issued June 22, 1999, the Commission granted Aloha's Motion to Strike OPC's response, granted in part and denied in part Aloha's Motion to Establish Burden, and denied Aloha's Motion for Reconsideration.

On July 6, 1999, the OPC and Representative Mike Fasano, Intervenors, filed their joint Intervenors' Motion for More Time to Provide Prefiled Testimony. That motion was granted by Order No. PSC-99-1375-PCO-WS, issued July 16, 1999.

On July 23, 1999, those same parties filed their Second Motion for More Time to Provide Prefiled Testimony. That motion was granted by Order No. PSC-99-1499-PCO-WS, issued August 3, 1999. In that Order, the controlling dates for the filing of any staff testimony and exhibits, rebuttal testimony and exhibits, and

On November 29, 1999, the Intervenors filed their Motion for More Time to Respond to Aloha's Motion to Supplement Direct Testimony. That motion was granted by Order No. PSC-99-2367-PCO-WS, issued on December 6, 1999. However, even before the order granting this request could be issued, the Intervenors filed their Response to Aloha's Motion to Supplement Direct Testimony on November 30, 1999.

By Order No. PSC-00-0087-PCO-WS, issued January 10, 2000, the Commission granted both the Intervenors' Motion to Correct Scrivener's Error and the Intervenors' Motion to Strike Certain Testimony and Exhibits. By that same Order the Commission denied the utility's Motion to Supplement Direct Testimony.

With the granting of the Motion to Strike, the following rebuttal testimony filed by the utility was stricken: pages 32 and 33, and Exhibit DWP-5 (pages 1-37) of Mr. Porter's rebuttal testimony; page 1, beginning at line 18, and continuing to page 2, line 16 and all of Exhibit SGW-1 of Mr. Watford's rebuttal testimony; the entirety of Mr. Nixon's rebuttal testimony and exhibits; and the entirety of Mr. Deterding's rebuttal testimony and exhibits.

A second Prehearing Conference was held on March 22, 2000. This Prehearing Order sets forth the agreements reached by the parties and the decisions reached by the Prehearing Officer for conduction of the formal hearing scheduled for March 29-30, 2000.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way

that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

The parties are hereby put on notice that the Commission may render a final decision in this case at the March 29-30, 2000 hearing. If the Commission defers making a final decision at the hearing, the following procedures shall apply:

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits

appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
David W. Porter, P.E.	Aloha	1, 2
Stephen G. Watford	Aloha	1, 2
*Robert C. Nixon, C.P.A.	Aloha	2
Ted L. Bidy, P.E./P.L.S.	OPC	1, 2
Michael D. LeRoy	Staff	1
**Pete Screnock	Staff	1
<u>Rebuttal</u>		
David W. Porter, P.E.	Aloha	1, 2
Stephen G. Watford	Aloha	1, 2

*The parties and Staff have all waived cross-examination of Mr. Nixon and have agreed that his testimony and exhibits may be admitted.

**The parties have agreed that Pete Screnock shall be allowed to testify on March 30, 2000, and that his presence would not be required on March 29, 2000.

VII. BASIC POSITIONS

UTILITY: It is the position of Aloha that its quality of service is satisfactory and that a final determination to that effect should be made by the Public Service Commission in this Docket. Additionally, Aloha should be afforded appropriate rate relief such that its costs incurred in this proceeding will be recovered by the utility.

OPC AND

REP. FASANO: The Commission has found Aloha's quality of service unsatisfactory. The Citizens believe, and will offer evidence that it remains so. Moreover, the Citizens will show that the proposed remedy submitted by Aloha is unrealistically grandiose, and that a far more modest and cheaper remedy is available to Aloha.

STAFF: The positions of staff for the identified issues are preliminary, are based upon materials filed by the utility, the OPC, customers, or obtained through discovery and are intended to inform the parties of staff's preliminary positions. Staff's final positions will be based upon an analysis of the evidence presented at hearing. Subsequent to the consolidated hearing held in Dockets Nos. 950615-SU and 960545-WS, the Commission, through Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, found that the quality of service provided by the utility was unsatisfactory. Therefore, staff believes it is incumbent upon the utility to show whether the quality of service provided by the utility is now satisfactory. Pending testimony at hearing, staff has no position on whether the utility should be required to take any additional action to improve its quality of service.

VIII. ISSUES AND POSITIONS

QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by the utility satisfactory?

POSITIONS

UTILITY: Yes, the quality of service is satisfactory. (Porter and Watford).

OPC: No, the quality of service is still unsatisfactory. (Bidby).

FASANO: Same as OPC.

STAFF: Subsequent to the consolidation hearing held in Dockets Nos. 950615-SU and 960545-WS, the Commission, through Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, found that the quality of service provided by the utility was unsatisfactory. Therefore, staff believes it is incumbent upon the utility to show whether the quality of service provided by the utility is now satisfactory. Pending additional evidence, staff believes the quality of service must be considered unsatisfactory. However, staff does note that the DEP witnesses state that the utility is in compliance with DEP rules and regulations. (LeRoy and Screnock)

ISSUE 2: What action, if any, should the Commission require the utility to take to improve the quality of service?

POSITIONS

UTILITY: The Commission should make a determination that no further action is necessary and that the quality of service is satisfactory. In the alternative, the Commission should order Aloha to make improvements as the Commission sees fit, in full recognition that Aloha's water meets all regulatory standards and any such improvements are above and beyond any requirements of the applicable environmental regulations. If the Commission requires any improvements, it should also authorize the appropriate rate increase to cover such costs in this docket. (Porter and Watford).

OPC: The Commission should order Aloha to install pressure filters where technically feasible and undertake a comprehensive test to establish whether its water is

unduly injurious to the plumbing of customers' homes.
(Biddy).

FASANO: Same as OPC.

STAFF: Pending additional evidence, staff takes no position on what action, if any, the Commission should require the utility to take to improve its quality of service.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
David W. Porter, P.E., C.O.	Aloha	_____ (DWP-1)	Volume I of the W a t e r Facilities Upgrade Study Report
Stephen G. Watford	Aloha	_____ (SGW-1)	Article from The Journal of the American Water Works Association
Stephen G. Watford	Aloha	_____ (SGW-2)	Copy of a Letter From A l o h a ' s Attorney to the PSC
Stephen G. Watford	Aloha	_____ (SGW-3)	Information from the prior h e a r i n g r e g a r d i n g c u s t o m e r complaints
Stephen G. Watford	Aloha	_____ (SGW-4)	Aloha's Survey Analysis
Robert C. Nixon, C.P.A.	Aloha	_____ (RCN-1)	Resume of Experience

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert C. Nixon, C.P.A.	Aloha	_____ (RCN-2)	Volume II of the Water Facilities Upgrade Study Report
Ted L. Biddy, P.E./P.L.S.	OPC	_____ (TLB-1)	Photographs of well sites
Ted L. Biddy, P.E./P.L.S.	OPC	_____ (TLB-2)	Well Test Results
Ted L. Biddy, P.E./P.L.S.	OPC	_____ (TLB-3)	Photographs at residences where testing occurred
Ted L. Biddy, P.E./P.L.S.	OPC	_____ (TLB-4)	Lab test results for water samples at residences
Ted L. Biddy, P.E./P.L.S.	OPC	_____ (TLB-5)	Test results of further lab tests obtained

Rebuttal

David W. Porter, P.E., C.O.	Aloha	_____ (DWP-1)R	Mr. Biddy's Memo to File
David W. Porter, P.E., C.O.	Aloha	_____ (DWP-2)R	S a v a n n a h Laboratories laboratory technician field notes
David W. Porter, P.E., C.O.	Aloha	_____ (DWP-3)R	S h o r t Environmental Laboratory letter

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David W. Porter, P.E., C.O.	Aloha	_____ (DWP-4)R	Table showing all recent testing data
Stephen G. Watford	Aloha	_____ (SGW-2)R	Estimated costs to complete water quality docket

Parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. STIPULATED ISSUES

The parties and Staff have all agreed to waive cross examination of Robert C. Nixon and that his testimony and exhibits may be admitted into evidence.

XI. PENDING MATTERS

There are no pending matters at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are none at this time.

XIII. RULINGS


All rulings have been made on any motions to date, and pursuant to his request and the agreement of the parties, Staff witness Pete Screnock shall be allowed to testify on the morning of March 30, 2000, and will not be required to be present on March 29, 2000. Also, based on the agreements in Section X. above, Aloha witness Robert C. Nixon shall not be required to attend the hearing.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 23rd day of March, 2000.



SUSAN F. CLARK
COMMISSIONER AND PREHEARING OFFICER

(S E A L)

RRJ/JKF

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.