

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

DOCKET NO. 020896-WS  
ORDER NO. PSC-02-1722-PCO-WS  
ISSUED: December 9, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER HOLDING CUSTOMER PETITION, ALONG WITH MOTIONS  
AND RESPONSES FILED THERETO, IN ABEYANCE UNTIL RESOLUTION  
OF APPEAL BY FIRST DCA

BY THE COMMISSION:

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. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. A hearing on this application was subsequently held in Pasco County on January 9 through 11, 2002, and we issued our Final Order No. PSC-02-0593-FOF-WU (Final Order) on April 30, 2002.

In our Final Order, we found that the overall quality of service of Aloha was unsatisfactory, and directed Aloha to improve its water treatment system starting with wells 8 and 9, and then continuing with all of its wells to implement a treatment process

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designed to remove at least 98% of the hydrogen sulfide in the raw water. The Final Order directed that these improvements to all of Aloha's wells were to be placed into service no later than December 31, 2003. In addition, Aloha was directed to submit a plan within 90 days of the Final Order showing how it intended to comply with the above-noted requirements for the removal of hydrogen sulfide. Our Final Order also directed Aloha to implement five customer service measures within 120 days from the date of the Final Order.

On May 28, 2002, Aloha filed its timely Notice of Appeal, and on June 14, 2002, Aloha filed its Motion for Stay. We considered Aloha's Motion for Stay at our July 23, 2002 Agenda Conference and subsequently, on August 5, 2002, issued Order No. PSC-02-1056-PCO-WU (Stay Order), which granted in part and denied in part Aloha's Request to Stay the Commission's Final Order.

On September 9, 2002, Aloha filed its Motion to Review our Stay Order with the First District Court of Appeal (First DCA). On October 7, 2002, the First DCA issued an order denying Aloha's Motion to Review the Commission's Stay Order and Motion to Stay. As a result of the Court's denial of Aloha's motion, Aloha must proceed with submitting a plan showing how it intends to remove the hydrogen sulfide from its raw water, and implement the customer service and conservation measures. Briefs have been filed, and on October 29, 2002, Aloha filed its Request for Oral Argument before the First DCA.

On July 18, 2002, we received a letter dated July 16, 2002, from V. Abraham Kurien, M.D. (Dr. Kurien), a customer of Aloha, which was accompanied by a petition (Customers' Petition) which had been signed by 1,491 residents from 1,314 households located in a portion of the Seven Springs Service Area of Aloha. In his letter, Dr. Kurien states that the Customers' Petition represents close to 80% of the domestic customers of Aloha Utilities who over a number of years have continued to experience unsatisfactory quality in their potable water in the form of black water, rotten egg smell, copper pipe corrosion, or combinations of these manifestations. The petition itself requests that the Commission grant the customers relief from being "captive customers" of the utility, and states four reasons on which the request is based:

Aloha Utilities has not been providing potable water to customers in our service area that meet the concept of 'competitive standard' set out by the PSC in its April 30, 2002 Order No. PSC-02-593-FOF-WU, as evidenced by the continuing high incidence of 'black water,' 'rotten egg smell,' and copper pipe corrosion, issues that have not been remedied since being raised almost ten years ago, whereas neighboring Utilities have effectively reduced such problems.

Aloha Utilities, Inc. has not instituted available processing methods (adopted by neighboring Pasco and Pinellas County Utilities) that have reduced the incidence of copper pipe corrosion and 'black water' but has continued with the sole method of super chlorination, which has so far proved ineffective and can have serious side effects.

Aloha Utilities has demonstrated an unwillingness and/or inability to meaningfully address our concerns by improving the characteristics of potable water so as not to cause harm to our property and/or health, and has continually stone-walled all recommendations for solving the problems using legalistic claims that it already provides 'clean, clear and safe' drinking water.

Aloha Utilities' lack of transparency about its water processing plant and methods has undermined the confidence of the customers in the safety of the water it supplies.

Following the receipt of the above-described letter and petition, this docket was established in order to consider the issues raised in the petition. On September 11, 2002, the Office of Public Counsel (OPC) filed its Notice of Intervention. By Order No. PSC-02-1274-PCO-WS, issued September 18, 2002, OPC's intervention was acknowledged. On September 26, 2002, we received Edward O. Wood's letter dated September 23, 2002, in which he requested that he be listed as an "Official Party of Record." A copy of that letter was forwarded to all the parties, and no response was received. Thus, by Order No. PSC-02-1504-PCO-WS, issued November 4, 2002, Mr. Wood was granted Intervenor status.

On September 5, 2002, Aloha filed its Motion to Dismiss which was accompanied by a Request for Oral Argument. On September 13, 2002, Dr. Kurien filed his Rebuttal to the Motion to Dismiss, and on September 17, 2002, OPC filed its Response to Motion to Dismiss. On November 4, 2002, we received a letter from Dr. Kurien submitting additional arguments to his Rebuttal to Aloha's Motion to Dismiss. On November 7, 2002, Aloha filed its Motion to Strike.

This matter was considered at our November 19, 2002, Agenda Conference. Present at that Agenda were Dr. Kurien and Mr. Wood, on behalf of themselves as customers of Aloha, representatives of Aloha, and representatives of OPC. We have jurisdiction to consider this matter pursuant to Sections 367.121 and 367.111, Florida Statutes.

As stated previously, the Customers' Petition requests relief by the Commission on several grounds. The petition further states:

THEREFORE, we request that the Plan of Action that Aloha Utilities has been asked to submit to the PSC in its April 30, 2002 Order No. PSC-02-593-FOF-WU be approved only after an independent audit of Aloha's processing plant and methodology and only if the Action Plan contains the minimum requirements adopted by neighboring utilities for raw water processing and if a Citizens' Advisory Committee is created to monitor the effectiveness of any plan that is accepted.

We would further request the PSC to order Aloha Utilities Inc. to put into effect new minimum requirements for processing water by April 30, 2003 in the hope that an earlier institution of remedial methods will lessen the likelihood of additional damage to our copper plumbing as well as the continued formation of hydrogen sulfide in the CPVC systems.

IF SIGNIFICANT RESOLUTION OF THE PROBLEM DOES NOT OCCUR by June 30, 2003 even after the institution of additional processing methods, the Public Service Commission is hereby requested to exercise its authority of 'granting a certificate and setting the service territory of any utility' to sequester the Seven Springs Area from Aloha

Utilities and make it part of the service area of Pasco County water utility system.

We find that the subject of the Customers' Petition and the issues contained therein are subsumed in the issues raised in Aloha's Appeal of our Final Order currently pending before the First DCA. Aloha has appealed our Final Order in its entirety, including the mandate that Aloha make improvements to wells number 8 and 9, and eventually to all of its wells and the implementation of a treatment process designed to remove at least 98% of the Hydrogen Sulfide in its raw water. In addition, the appeal of the Final Order includes the requirement that Aloha submit a plan within 90 days of the date of the Final Order showing how Aloha intends to comply with the requirement to remove Hydrogen Sulfide.

We find that the issues raised in the Customer Petition are inextricably entwined with the Final Order currently on appeal. Further, in the absence of a Commission Motion to relinquish jurisdiction under Rule 9.600(b), Florida Rules of Appellate Procedure, our authority to act in the docket is extremely limited.

Therefore, we find that the Customers' Petition, along with Aloha's Motion to Dismiss, the Request for Oral Argument, and the Responses filed thereto, shall be held in abeyance until the First DCA renders an opinion on Aloha's appeal of the Commission's Final Order.

However, in an effort to promote the speedy resolution of the matters contained in the Customers' Petition, we hereby direct our staff to file a Motion to Expedite Aloha's Appeal with the 1<sup>st</sup> DCA.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Customers' Petition, Aloha's Motion to Dismiss, and the Responses filed thereto, shall be held in abeyance until Aloha's Appeal of the Commission's Final Order in Docket No. 010503-WU, is resolved by the First District Court of Appeals. It is further

ORDERED that our staff shall file a Motion to Expedite Aloha's Appeal with the First District Court of Appeals. It is further

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ORDERED that this docket shall remain open pending the outcome of the appeal of the Final Order before the First District Court of Appeals.

By ORDER of the Florida Public Service Commission this 9th day of December, 2002.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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.

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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 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.