

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-03-1157-PCO-WU
ISSUED: October 20, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DENYING ALOHA UTILITIES, INC.'S MOTION
FOR EXTENSION OF TIME TO COMPLY WITH
ORDER NO. PSC-02-0593-FOF-WU

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. 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.

Among other things 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. In addition, we directed Aloha to implement five customer service measures within 120 days from the date of the Final Order.

The utility appealed this decision to the First District Court of Appeal (First DCA), and sought a stay. By Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, we granted in part and denied in part the utility's Motion for Stay. Specifically, we stayed the

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implementation of the new rate structure, as well as the interim refunds and plant improvement requirements. We did not stay our directive that Aloha must implement five customers service measures within 120 days from the date of the Final Order, and, as a result, the Aloha Citizens' Advisory Committee was created and is currently active.

The First DCA affirmed the Commission's Final Order on May 6, 2003, and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA's mandate was issued on June 30, 2003. As a result, the appellate review is complete and all provisions of the Final Order are now final and effective.

On July 23, 2003, we received a letter from the Office of Public Counsel (OPC), setting forth both its and the Citizens' Advisory Committee's positions on both the timing of, and the implementation of the improvements as required by the Final Order. On July 29, 2003, Aloha filed its Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU (Motion). Neither OPC nor any of the other parties to this docket filed a response to Aloha's Motion. However, counsel for OPC did advise our staff that it stood by its July 23, 2003 letter.

Current Time Frame Mandated by Final Order

Our Final Order issued April 30, 2002, directed Aloha to improve its water treatment system starting with Wells Nos. 8 and 9, and then continuing with all of its wells to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. We also required these improvements to all of Aloha's wells were to be placed into service no later than December 31, 2003, which would have given Aloha twenty months from the issuance date of our Final Order to comply. However, as discussed above, this mandate of the Final Order was specifically stayed pending resolution of Aloha's appeal.

The First DCA affirmed our Final Order on May 6, 2003, and subsequently denied the utility's Motion for Rehearing on June 12, 2003. Thus, the stay on the Final Order was effectively lifted as of June 12, 2003. Applying the twenty month compliance period to this date would require Aloha to complete its well improvements by February 12, 2005.

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Docket No. 020896-WS

Subsequent to Aloha's appeal of our Final Order, we received a customer petition which had been signed by approximately 1,491 residents from households located in a portion of Aloha's Seven Springs service area. Docket No. 020896-WS was established in order to address the customers' petition.

Among the various issues raised in the petition, the customers requested that an independent audit of Aloha's processing plant and methodology be conducted. Because the subject of the petition and the issues contained therein were subsumed in the appeal of the Final Order, at our November 19, 2002 Agenda Conference, we unanimously voted to hold the customer petition docket in abeyance. However, during the course of discussions regarding this docket, OPC volunteered to accept the responsibility to undertake and finance an independent audit of Aloha's processing plant and methodology, which was requested by the customers in their petition.

OPC commissioned Dr. Audrey Levine of the University of South Florida to conduct the independent audit, the results of which are expected to be published in the near future. Further, it is our understanding that Dr. Levine's audit findings will address several of the directives contained in the Final Order, including the requirements that Aloha improve its water treatment system starting with Wells Nos. 8 and 9 and then continue with all of its wells, and the implementation of a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water.

Letter from OPC dated July 23, 2003

We received a letter from OPC dated July 23, 2003, in which OPC set forth its positions and the Citizens' Advisory Committee's positions on the topic of Aloha's intention to seek to have us amend some of the requirements of our Final Order. Specifically, the improvements to Aloha's wells and treatment process as discussed above.

With respect to the deadline for completing all remedial additions to Wells Nos. 8 and 9, OPC states in its letter that the customers want and expect to have a voice in the determination of

which changes should be made. Further, until Dr. Levine's audit findings have been completed, the Advisory Committee cannot reach a conclusion as to the proper action that should be taken for Wells Nos. 8 and 9. For these reasons, the Advisory Committee "strongly advises that Aloha refrain from expending any significant amount of funds to reduce hydrogen levels at Wells Nos. 8 and 9, until the Citizens' audit is complete." OPC's letter also states that the Advisory Committee is aware that its position may require that the current deadline be adjusted and therefore has no objection to an adjustment of the deadline date.

Aloha's Motion for Extension of Time to Comply with the Final Order

Aloha filed its Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU on July 29, 2003. In support of its Motion, Aloha states that it has been engaged in extensive discussions with OPC in order to determine whether, through a mutual agreement or alternative course of action, some or all of the costs which would be incurred implementing the directives of the Final Order could be avoided. According to Aloha, these discussions are the primary basis for its request.

Aloha references the independent audit being performed by Dr. Levine, and states that representatives of Aloha, along with its consulting engineer, have met with Dr. Levine on numerous occasions over the last two months, and have discussed various alternative treatment options. Aloha states that it appears quite possible that there can be an agreement reached between OPC and Aloha for some alternative course of action based on Dr. Levine's analysis.

Aloha states that it has informally agreed with OPC that until it is determined whether an agreement for an alternative course of action can be reached, there should be an attempt to avoid the costs that would be incurred by implementing plant improvements as directed by our Final Order. However, Aloha further states that the receipt and analysis of Dr. Levine's report is a necessary condition precedent to any agreement on the part of OPC and Aloha as to what alternative course of action may be taken.

Aloha believes that once Dr. Levine's report is finalized, it will take no longer than one week for OPC and Aloha to analyze the report, and then meet in order to determine whether a reasonable

alternative course of action can be mutually recommended by both parties. Aloha further states that if the parties can reach an agreement, they would jointly request that the Final Order be modified to the benefit of Aloha and its customers. Aloha recognizes that the final decision as to whether a proposed modification is appropriate ultimately rests with this Commission.

In further support of its Motion, Aloha states that in order to meet the deadlines currently imposed by the Final Order, there must be an immediate expenditure of time, energy and money. According to Aloha, OPC agrees that expenditures in the interim would be inappropriate until such time as the possible alternatives proposed by Dr. Levine are examined. Moreover, Aloha points to the July 23, 2003 letter received from OPC, proposing that no improvements be undertaken at this time, until the parties have a chance to examine Dr. Levine's report.

Accordingly, Aloha is requesting that we grant a 100-day extension to the deadline mandated by the Commission's Final Order in order to allow further discussions among the parties regarding the treatment plant improvements. Aloha notes that time is of the essence, and that all discussions with OPC about potential alternatives will be completed within 60 days of the date of its Motion, at which time, Aloha will file an additional motion reflective of the outcome of its discussions with the Citizens.

As stated previously, the stay on the our Final Order was effectively lifted as of June 12, 2003, making the time frame in which to complete the plant improvements February 12, 2005. Because the Final Order did not include a required start date for the plant improvements, the additional 100 days that Aloha is requesting would be added to the end of deadline, which would make the required completion date May 23, 2005, instead of February 12, 2005.

We agree that OPC and Aloha should continue the discussions in which they are currently engaged, in the hopes that the discussions will result in achieving the goals of our Final Order, but at a lower cost to the customers and utility. Aloha itself states that it is in agreement with the conclusion in OPC's July 23, 2003 letter, that no improvements should be undertaken at this time until the parties have a chance to analyze Dr. Levine's report and

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discuss possible agreement on alternative courses of action to those proposed in the Final Order.

However, we believe that the 100-day extension that Aloha seeks is premature at this time. The parties agree that no improvements should be undertaken until Dr. Levine's report has been analyzed and discussions have been held on possible alternative courses of action, but we do not believe that it is necessary to add an additional 100 days to a deadline which is currently 600 days in the future. As Aloha states in its Motion, upon completion of its discussions with OPC, Aloha plans to return and request a modification of the Final Order. It is our belief that the appropriate time for Aloha to request additional time to comply with the Final Order, if needed, would be at the same time it requests a modification of the Final Order.

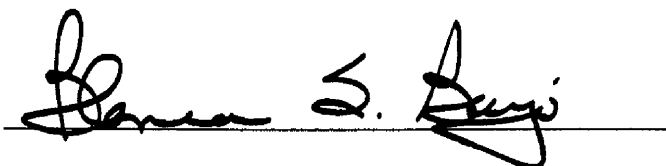
For the reasons stated above, we find that Aloha's Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU is premature, and thus it shall not be granted at this time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU is premature, and shall not be granted at this time. It is further

ORDERED that this docket shall remain open so that the remaining outstanding issues in this docket can be resolved.

By ORDER of the Florida Public Service Commission this 20th Day of October, 2003.



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

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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.

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.