

BEFORE THE 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

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-05-0013-PCO-WS
ISSUED: January 4, 2005

ORDER OF COMMISSIONER CHARLES M. DAVIDSON DECLINING
DISQUALIFICATION FROM DOCKET NOS. 020896-WS AND 010503-WU

On December 9, 2004, Aloha Utilities, Inc. (Aloha) filed its Motion suggesting my disqualification from consolidated Docket Nos. 020896-WS and 010503-WU. The Motion, accompanied by a request for oral argument, was filed pursuant to Section 120.665, Florida Statutes, which states in pertinent part:

. . . any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

Just cause may be demonstrated when the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing. Charlotte County v. IMC-Phosphates Co., 824 So. 2d 298, 300 (Fla. 1st DCA 2002), citing Dept. of Agriculture v. Broward Co., 810 So. 2d 1056, 1058 (Fla. 1st DCA 2002).

In reviewing Aloha's Motion, I note that I must assume that the allegations of fact in the motion are true, but that my disqualification is not required by allegations that are too tenuous and speculative to require disqualification of an agency head. I note further that the standards for disqualifying an agency head differ from the standards for disqualifying a judge, in recognition of the fact that agency heads have significantly different functions and duties than do judges. Bay Bank & Trust v. Lewis, 634 So. 2d 672, 678-679 (1st DCA 1994); see also, Hospice of Palm Beach County v. State AHCA and Vista Healthcare, 876 So. 2d 4, 6 (1st DCA 2004).

Upon review, I find that the allegations contained in Aloha's Motion are not legally sufficient under Section 120.665, Florida Statutes, to demonstrate bias, prejudice, or interest in the docketed proceeding. The allegations at issue are tenuous and speculative because they either conflict internally with other allegations within the body of the Motion itself, or are inconsistent with the exhibits attached to the Motion.

DOCUMENT NUMBER-DATE

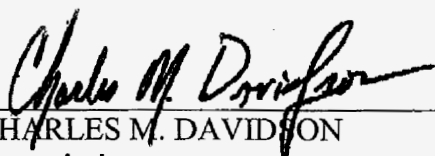
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Further, Aloha has provided no authority for its claim that the inclusion in a public statement by an agency head of clarifying guidance as to its proper interpretation is automatic evidence of bias. Management Corp. of America, Inc. v. Grossman, 396 So. 2d 1169 (Fla. 3rd DCA 1981) and Hill v. The Honorable Richard Y. Feder, 564 So. 2d 609 (3rd DCA 1990), the cases cited by Aloha, concern the attempts of judges to refute allegations of bias when ruling on disqualification motions, not the matters alleged by Aloha.

Therefore, based on the above, I decline to recuse myself from this proceeding. The request for oral argument is denied.

By ORDER of Commissioner Charles M. Davidson this 44th day of January,
2005.



CHARLES M. DAVIDSON
Commissioner

(SEAL)
RCB

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.