



Public Service Commission

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DATE: AUGUST 17, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JAEGER, FUDGE)
DIVISION OF ECONOMIC REGULATION (MONIZ)
DIVISION OF REGULATORY OVERSIGHT (DANIEL, WALDEN)

RE: DOCKET NO. 960545-WS - INVESTIGATION OF UTILITY RATES OF ALOHA UTILITIES, INC. IN PASCO COUNTY.

AGENDA: 08/29/2000 - REGULAR AGENDA - POST-HEARING DECISION PARTICIPATION LIMITED TO STAFF AND COMMISSIONERS

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\960545R2.RCM

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.

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, and a formal hearing was scheduled.

For the purposes of the initial hearing (First Hearing), Docket No. 960545-WS was consolidated with Docket No. 950615-SU (Aloha's reuse case). The First Hearing was held on September 9-

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10, 1996 in New Port Richey, and concluded on October 28, 1996 in Tallahassee.

Subsequent to this hearing, the Commission issued Order No. PSC-97-0280-FOF-WS on March 12, 1997. In that Order, based in part on the "blackwater" problem, the Commission determined that the quality of service provided by Aloha's water system was unsatisfactory. The Commission ordered Aloha to evaluate the treatment alternatives for removal of hydrogen sulfide from its water and prepare a report that addressed this evaluation.

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.

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 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 again 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 Proposed Agency Action Order No. PSC-99-0061-FOF-WS (PAA Order), determining that the Commission should take no further actions in regards to quality of service in this docket and closing the docket. Moreover, by final action, the Commission denied the utility's request for an order declaring it to be prudent to begin construction of three central water treatment facilities.

Subsequently, three customers - Edward O. Wood, James Goldberg, on behalf of the Wyndtree Master Community Association

(recognized as a party), and Representative Mike Fasano (also a party), filed timely protests to the PAA Order, and requested a formal hearing. Mr. Wood was contacted and asked if he wanted to participate as a party. He stated that he did not.

Based on these protests, a second hearing was held on March 29-30 and April 25, 2000, to determine if the quality of service was still unsatisfactory, and what actions, if any, should the Commission require the utility to take to improve the quality of service. Customer testimony was taken in two sessions on March 29, 2000, and several hundred customers attended each session. Approximately 50 customers testified. The technical portion of the hearing began on March 30, 2000, in New Port Richey and was continued and concluded on April 25, 2000, in Tallahassee, Florida.

Briefs were timely filed on May 19, 2000. Also on May 19, 2000, the Office of Public Counsel (OPC) filed its Motion to Strike Exhibit Testimony (Motion). In that Motion, OPC specifically requested that Late-Filed Exhibit 13 (response detailing Aloha's engineer's visit to homes of customers who had testified at hearing about quality of service problems) be stricken in its entirety. The utility filed its timely response to this Motion to Strike on May 30, 2000.

Subsequent to this second hearing, the Commission issued Order No. PSC-00-1285-FOF-WS on July 14, 2000. In that Order, the Commission struck one full paragraph of Exhibit 13 and an attached newspaper article. However, the rest of Exhibit 13 was admitted.

Also, the Commission specifically found that the overall quality of service provided by the utility was marginal. Among other things, the Commission ordered the utility to "immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes." The Commission also required the utility to begin charging a temporary water service availability charge of \$500 (with \$336.20 of that charge being escrowed and subject to refund), and for the utility to file a service availability application by February 1, 2001. The Order provided that this docket shall remain open until the service availability case is filed, after which time the docket shall be closed administratively.

In response to this Order, by letter dated July 22, 2000, and received by the Commission on July 28, 2000, Mr. Edward Wood objected to the finding that the quality of service is marginal, and stated that it should be considered unsatisfactory. Moreover,

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among other things, Mr. Wood requested that the docket not be closed and that additional public hearings be held to allow all customers to rebut Aloha's expert testimony. Finally, Mr. Wood stated that: "I am writing this letter as an appeal to the ruling."

By overnight mail (sent August 8, 2000), staff responded to Mr. Wood and advised him that parties could file an appeal with the First District Court of Appeal by no later than August 14, 2000, and that he should contact OPC to discuss his options. Moreover, Mr. Wood's letter was forwarded to all parties (by facsimile to OPC), and staff discussed Mr. Wood's letter with OPC.

On July 31, 2000, Aloha filed its Motion for Clarification of the fifth ordering paragraph of Order No. PSC-00-1285-FOF-WS, which reads as follows:

ORDERED that Aloha Utilities, Inc., shall immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes as set forth in the body of this Order.

The time for filing an appeal expired on August 14, 2000, and no appeal was taken. This recommendation addresses Mr. Wood's letter and Aloha's Motion for Clarification.

DISCUSSION OF ISSUES

ISSUE 1: Should the Motion for Clarification filed by Aloha Utilities, Inc. be granted?

RECOMMENDATION: The motion should be granted in part and denied in part. The Commission should clarify the Order to make it clear that the utility should choose the best available treatment alternative to remove hydrogen sulfide. The fifth ordering paragraph should be amended to read as follows:

ORDERED that Aloha Utilities, Inc., shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes as set forth in the body of this Order.

While packed tower aeration is clearly an acceptable method, the Commission should not designate the specific treatment alternative. That choice should be made by the utility. (JAEGER, WALDEN)

STAFF ANALYSIS: On July 31, 2000, Aloha filed a Motion for Clarification of Order No. PSC-00-1285-FOF-WS (Motion). Specifically, the utility seeks clarification of the fifth ordering paragraph of the Order, which directs the utility to "immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes"

Aloha argues in its Motion, in numbered paragraph 2, that there is no definition of the "best available treatment alternative" in the Order, nor was that term used at the hearing. Staff agrees. However, staff notes that there are technological advances every day and does not want to restrict the choices of the utility.

Numbered paragraph 3 states that Aloha has provided information and suggested alternatives for water treatment, including what Aloha believes to be the best available method for the reduction of hydrogen sulfide. Staff agrees with Aloha's statements in paragraph 3.

Aloha further states in numbered paragraph 4 that the Order provides no guidance as to which treatment alternative should be implemented and that the Order "does not specify the removal of

hydrogen sulfide as the goal of the pilot project." Staff agrees with Aloha's statements in paragraph 4.

Aloha explains in numbered paragraph 5 that the pilot project is not a study of treatment alternatives, but rather a mini-treatment plant using a selected treatment method. The sole purpose of a pilot project is to determine sizing of components and dosing rates for the prescribed treatment. Staff agrees with Aloha's characterization of the purpose of the pilot project.

In numbered paragraph 6, Aloha states that the Order does not delineate the methodology to be used to remove the hydrogen sulfide. Staff agrees. The method selected to accomplish this goal of hydrogen sulfide removal should be the utility's own choosing. The Commission does not dictate or limit treatment techniques or technologies, but instead allows utilities to rely upon designs recommended by their consultants and approved by the Florida Department of Environmental Protection. Staff would agree however that the record shows that packed tower aeration appears to be the best method for removing the most hydrogen sulfide from the water, based upon the testimony from the utility and DEP witness Mike Leroy, who stated that packed tower aeration was the correct solution. Mr. Leroy noted that there are numerous plants in Florida that use this treatment method, including Pinellas County. (Order at p. 18)

In numbered paragraph 7, Aloha states that it knows of no method or different treatment option other than those presented at the hearing. Staff believes that while there may be other options, the intent is not to limit Aloha to the selection of packed tower aeration, in case Aloha finds another treatment alternative it believes to be superior.

Numbered paragraph 8 states that Aloha was given no guidance in the Order as to the treatment method to be utilized. Based upon the record, staff believes the record shows that packed tower aeration is the preferred method of hydrogen sulfide removal.

In its prayer for relief, Aloha requests the Commission to provide specific guidance as to the treatment methodology that the Commission desires that Aloha implement through a pilot testing program, and that until this was done, Aloha would not be able to comply with the Commission's Order. Staff believes that the intent of the fifth ordering paragraph is for Aloha to begin a pilot project that will enhance the water quality by removing hydrogen sulfide from the water. It is obvious from the Order and the testimony in this proceeding that the chemical treatment with

chlorine converting the sulfides to sulfates is not adequate. The Commission noted that "The current treatment method of converting the sulfides to sulfate through chlorination, while effective in meeting current drinking water standards, is not adequate for customer satisfaction due to the reconvertng of sulfates back to sulfides, causing the black water problem." (Order at p. 20)

For the reason stated above, staff recommends that the utility's motion be granted in part, and denied in part. The Commission should clarify the fifth ordering paragraph to mean that the utility should choose the best available treatment alternative to remove hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes. While packed tower aeration is clearly an acceptable method, the Commission should not designate the specific treatment alternative. That choice should be made by the utility. Based on this clarification, the fifth ordering paragraph of Order No. PSC-00-1285-FOF-WS should be amended to read as follows:

ORDERED that Aloha Utilities, Inc., shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes as set forth in the body of this Order.

ISSUE 2: What action, if any, should the Commission take on the July 22, 2000, letter from Mr. Edward Wood?

RECOMMENDATION: The Commission should take no action on Mr. Wood's letter. (JAEGER, FUDGE)

STAFF ANALYSIS: As stated in the case background, On July 28, 2000, the Commission received a letter from Mr. Edward Wood dated July 22, 2000. In his letter, Mr. Wood objected to the finding that the quality of Aloha's service is marginal, and stated that it should be considered unsatisfactory. Also, he stated that the customers should be compensated for having to purchase drinkable water (bottled water) and for the cost of flushing, and that the utility should not be compensated for the additional costs of the treatment process to clean up the utility's water. Finally, Mr. Wood stated that: "I am writing this letter as an appeal to the ruling," and requested "that you would not close Docket Number 960545-WS," and that "you would hold additional Public Hearings in Pasco County on this issue, so that all customers may have a chance to express their concerns and rebut the 'expert' testimony."

Staff believes that Mr. Wood's letter is much in the nature of a Motion for Reconsideration. However, Rule 25-22.060(1)(a), Florida Administrative Code, governs Motions for Reconsideration and states, in pertinent part: "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." (emphasis supplied) Mr. Wood is not a party of record in this docket. Therefore, staff does not believe that it is appropriate to treat the letter as a Motion for Reconsideration.

If it were proper to treat Mr. Wood's letter as a Motion for Reconsideration, the proper standard of review for a Motion for Reconsideration would be whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., at 317.

Mr. Wood's letter fails to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. Mr. Wood states that little attention, if any, was paid to the testimony of the customers. Staff believes that the Commission appropriately considered the customer testimony as well as the customer letters received and examined in Attachment 1 of the Order.

Mr. Wood also states that the quality of service provided by Aloha is unsatisfactory. Staff believes that the Commission thoroughly discussed and considered this issue. The Commission did not find that the overall quality of service provided by Aloha was unsatisfactory. In finding the quality of service to be marginal, the Commission noted that the utility was meeting all state and federal standards. Moreover, the Commission noted that the majority of the complaints are limited to the Seven Springs service area and not throughout Aloha's total system, which includes the Aloha Gardens service area.

Mr. Wood also requests that this docket not be closed and that additional hearings be held. The Order requires the docket to remain open pending Aloha's filing of a service availability application by February 1, 2001. Also, staff notes that there have already been two formal hearings (with four customer sessions in the service area) at which over 100 customers testified about the quality of service provided by Aloha. Staff also notes that the plan to form an Inter-Agency Black Water Work Group was approved at the August 1, 2000, Internal Affairs. Staff believes that the Work Group will be an effective forum for finding solutions to the black water problem. Consequently, staff believes that no additional public hearings should be held at this time in this docket.

Finally, Mr. Wood stated that he wrote this letter as an appeal to the ruling. Staff counsel has unsuccessfully attempted to contact Mr. Wood numerous times by telephone. Therefore, on August 8, 2000, Staff counsel sent a letter by overnight mail to Mr. Wood stating that Staff has contacted OPC to request that OPC review the letter and assist Mr. Wood in exploring any options available to Mr. Wood and/or the OPC. OPC is aware that the time for filing an appeal expires on August 14, 2000. However, at the drafting of this recommendation, staff counsel was advised that OPC has been unable to contact Mr. Wood thus far.

Based on the foregoing, staff recommends that the Commission should take no further actions in regards to Mr. Wood's letter.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, pursuant to Order No. PSC-00-1285-FOF-WS, this docket should remain open until Aloha files its application to revise its service availability charges. (JAEGER, FUDGE)

STAFF ANALYSIS: Pursuant to Order No. PSC-00-1285-FOF-WS, this docket should remain open until Aloha files its application to revise its service availability charges.