

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 991643-SU
ORDER NO. PSC-00-1636-PCO-SU
ISSUED: September 13, 2000

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR.
LILA A. JABER

ORDER DENYING REQUEST FOR ORAL ARGUMENT AND MOTION FOR RECONSIDERATION, VACATING ORDER NO. PSC-00-1288-PCO-SU, GRANTING MOTIONS FOR EXTENSION OF TIME TO FILE PREFILED TESTIMONY AND MODIFYING ORDER NO. PSC-00-0872-PCO-SU

BY THE COMMISSION:

REQUEST FOR ORAL ARGUMENT AND MOTION FOR RECONSIDERATION

On July 27, 2000, Aloha Utilities, Inc. (Aloha or utility) filed a Motion for Reconsideration of Order No. PSC-00-1288-PCO-SU, issued July 17, 2000, by the Prehearing Officer. Along with its Motion for Reconsideration, Aloha filed a Request for Oral Argument. Because the points raised in the Motion for Reconsideration do not require oral argument in order to be fully addressed, Aloha's Request for Oral Argument is denied.

The standard of review of a motion for reconsideration is 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

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record and susceptible to review." Stewart Bonded Warehouse, Inc.
at 317.

The utility has objected to several sentences contained in Order No. PSC-00-1288-PCO-SU. However, upon reviewing those sentences and the order in its entirety, we find that Aloha has failed to point out any mistake of fact or law contained therein. Therefore, Aloha's Motion for Reconsideration is denied.

VACATION OF ORDER NO. PSC-00-1288-PCO-SU

Although we have denied the utility's motion for reconsideration, we do note that staff and the parties did reach a total settlement which completely disposed of all pending motions. Therefore, the sentences which the utility found objectionable were not required in granting the motions for extension of time and were extraneous. Based on this finding, Order No. PSC-00-1288-PCO-SU is vacated in its entirety, and the portion of this Order set forth below is substituted in its place.

SETTLEMENT AGREEMENT AND MODIFICATION
OF ORDER NO. PSC-00-0872-PCO-SU

Staff's First Set of Interrogatories and Request for Production in the above-referenced docket were served on Aloha on May 24, 2000. Responses to these discovery requests were due on June 28, 2000. Aloha untimely filed its responses to both the Interrogatories and Requests for Production on June 30, 2000.

On July 10, 2000, the Office of Public Counsel (OPC) filed a Motion for Extension of Time to File Testimony. Alleging that Aloha failed to respond to the discovery requests, staff filed a Motion to Compel, Request for Extension of Time to File Prefiled Testimony, and Request for Expedited Response Time on Motion to Compel (Motion to Compel) on July 11, 2000. Also, on July 11, 2000, OPC filed an Amendatory Motion clarifying that it sought a testimony due date of July 31, 2000.

By Order No. PSC-00-1272-PCO-SU, issued July 11, 2000, any response to the Motion to Compel was to be filed by July 13, 2000. In addition, all parties were ordered to file by July 13, 2000, any responses to the Motions for Extension of Time to Prefile Testimony. The utility filed its timely response to the motions on July 13, 2000. On that same date, the utility also filed its request for oral argument on the two motions.

The utility and staff ultimately reached an agreement on what information the utility would provide in response to staff's discovery. In return, staff agreed to withdraw its motion to compel. Further, staff, OPC, and the utility agreed that all parties and staff should be granted a two-week extension to file direct and rebuttal testimony because of the delay caused by the discovery dispute.

For Interrogatory No. 3, staff has agreed to accept, and the utility has agreed to provide, information regarding any known or measurable changes to: purchased water, purchased wastewater, envelope billing, new employees, customer growth in the Seven Springs service area, and cost of the pilot project required by Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS. For Interrogatory No. 7(b), the utility has agreed to provide the information requested. Staff now agrees that no further response is required for Interrogatory No. 28(c). For Interrogatory No. 31, the utility has agreed to provide a customer billing history file in ASCII format from mid-1995 through 1998, including record layout. The utility will also provide a customer billing history in FoxPro format from mid-1998 through December 31, 1999. The utility agreed to provide the above mentioned information on July 20, 2000.

Because the agreement to provide the above-noted information resolved all pending discovery disputes, and staff thus withdrew its Motion to Compel, there is no need to rule on Staff's Motion to Compel.

Recognizing that the parties and staff have reached agreement on the substance of the motion to compel and on the motions for extension of time, OPC shall be given up to and including July 31, 2000, to prefile its direct testimony. Staff shall have up to and including August 28, 2000, to prefile its direct testimony. Also, the utility shall be given a two-week extension and shall file its rebuttal testimony on September 11, 2000. Accordingly, there is no need to have oral argument on the Motions for Extension of Time. Order No. PSC-00-0872-PCO-SU, issued May 3, 2000, the Order Establishing Procedure and setting controlling dates, is therefore modified to reflect the changes herein, and is otherwise reaffirmed in all other respects.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s Request for Oral Argument and Motion for Reconsideration of Order No. PSC-00-1288-PCO-SU are denied. It is further

ORDERED that Order No. PSC-00-1288-PCO-SU shall be vacated in its entirety. It is further

ORDERED that Staff's Motion for Extension of Time to file Prefiled Testimony is hereby granted. Staff shall prefile its direct testimony by August 28, 2000. It is further

ORDERED that the Office of Public Counsel's Motion for Extension of Time to File Prefiled Testimony, as amended, is hereby granted. The Office of Public Counsel shall prefile its testimony by July 31, 2000. It is further

ORDERED that Aloha Utilities, Inc. shall file its rebuttal testimony by September 11, 2000. It is further

ORDERED that Order No. PSC-00-0872-PCO-SU, issued May 3, 2000, is hereby modified to reflect the changes in controlling dates as set forth herein, and is otherwise reaffirmed in all other respects. It is further

ORDERED that this docket shall remain open pending a ruling on the application of Aloha Utilities, Inc., for increased wastewater rates.

By ORDER of the Florida Public Service Commission this 13th day of September, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)
RRJ

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, except for the portion of the order denying reconsideration, 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.

Any party adversely affected by the Commission's denial of reconsideration which is issued as final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.