

State of Florida



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

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**DATE:** August 12, 2002  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Office of the General Counsel (Gervasi) *GS*  
**RE:** Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes.

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Please file the attached e-mail correspondence from Dr. V. Abraham Kuriem, dated August 11, 2002, in the docket file for the above-referenced docket.

RG/dm

cc: Division of Economic Regulation (Fletcher)  
Suzanne Brownless, Esquire  
Diane Kiesling, Esquire

I:\020413fm rg

DOCUMENT NUMBER DATE  
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FPSC-COMMISSION CLERK

## Rosanne Gervasi

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**From:** Rosanne Gervasi  
**Sent:** Monday, August 12, 2002 9:50 AM  
**To:** 'akurien@attglobal.net'  
**Cc:** Bart Fletcher  
**Subject:** RE: Response to Staff recommendations

Dear Dr. Kurien,

Thank you for taking the time to provide this Commission with your thoughts and concerns. We will be sure to bring your written presentation to the attention of the Commissioners.

The audio tape of the August 20 agenda conference will be posted on the Commission's website soon after the agenda conference. You may access the audio tape by clicking the link below and then clicking on the date of the agenda conference that you wish to listen to.

[http://www.psc.state.fl.us/events/audio\\_video/archives.cfm](http://www.psc.state.fl.us/events/audio_video/archives.cfm)

If I may be of further assistance, please feel free to contact me.

Rosanne Gervasi, Senior Attorney  
Florida Public Service Commission  
Office of the General Counsel  
Economic Regulation Section  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399  
ph. (850) 413-6224  
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-----Original Message-----

**From:** V. Abraham Kurien [mailto:akurien@attglobal.net]  
**Sent:** Sunday, August 11, 2002 12:45 PM  
**To:** Rosanne Gervasi  
**Subject:** Response to Staff recommendations

Hello Atty Gervasi,

I am sending by post two documents: one a covering letter addressed to you and the other a presentation before the Agenda Conference. They are self explanatory. I am sending e-mail copies of them to you, so that if you have the time you can reply. I am leaving for Canda on Tuesday 13th and will not be back till August 28.

Abraham Kurien

V. Abraham Kurien, M.D.  
1822 Orchardgrove Avenue,  
NEW PORT RICHEY, FL 34655  
(727) 376-9747

Atty Rosanne Gervasi,  
Senior Attorney,  
Public Service Commission  
2540 Shumard Oak Boulevard  
TALLAHASSEE, FL 32399-0850

August 11, 2002

Dear Atty Gervasi,

RE: DOCKET NO 020413-SU  
SHOW CAUSE PROCEEDINGS AGAINST ALOHA UTILITIES

Thank you for forwarding to me a copy of the Staff recommendations filed on August 8 in this matter.

First of all, I want to let you know that I will not be able to be physically present at the Agenda Conference on August 20, 2002, as I will be out of the country at that time and will be unable to attend the meeting.

However, if it is possible for me to make a written presentation in the discussion of this item, I would like to do so, and I am enclosing such a presentation to be read at the meeting.

I would appreciate your forwarding to me a transcript of the meeting or indicate to me where I can download it from, if it would be posted on the internet.

I appreciate the courtesy shown to me.

Yours sincerely,

V. Abraham Kurien  
A customer of Aloha Utilities

V. Abraham Kurien, M.D., a customer of Aloha Utilities  
1822 Orchardgrove Avenue  
NEW PORT RICHEY, FL 34655

The Commissioners of  
The State of Florida  
Public Service Commission

August 20, 2002

Chairman Jaber and Honorable Commissioners,

I want to thank you for allowing me to participate in the discussion of Docket No 020413-SU in absentia by making this presentation.

Since I am not a lawyer by training or profession, I seek your indulgence in not making my presentation in legal language or by quoting case references or citing precedents. However as a citizen and a customer of Aloha who has an innate sense of justice and fairness, I would like to make my presentation by analogy, which I hope will be a persuasive method.

If I understand the staff recommendations in this connection, the most relevant matters as far as the residential customers should be concerned with are:

*Issue 2, which discusses whether Aloha should be fined for "failure to charge its approved service availability charges and to timely file a revised tariff sheet reflecting those charges" and Issue 4, which discusses whether "Aloha should be required to impute on its books as though it collected any amount of the CIAC that it should have collected between May 2, 2002 and April 16, 2002".*

The situation under review is analogical to a situation that might arise when County X increases its sales tax, let us say from 5 to 6%, for a specific service and the county notifies all Corporations in the county that they must in future collect an increased percentage as sales tax for this particular service if and when provided by them. A year later when Corporation Y submits its sales tax collection, the county tax collector notices that Corporation Y had a superb business year, but the amount of tax collected is short by 1%.

Corporation Y requests permission to collect the uncollected portion of the tax from its customers to whom it sold services, but this is refused by County X because the customers paid the tax as demanded by the business and recorded in their purchase receipts. County X and Corporation Y then starts a legal sparring match about how to make up the lost revenue, which was intended for providing additional services for the

community. County X considers that it has the 'discretion' to forgive Corporation Y its act of omission and determines that the corporation should be required to **pay only less than 25%** of the sales tax it did not collect from the customers. The argument put forward to justify this decision is that "*full imputation could detract financial lenders' willingness to approve additional loans for*" Corporation Y.

Faced with the loss of over 75% of the tax money that was budgeted for future expansion, County X is now faced with the need to raise that amount through some other means. Since Corporation Y is the *sole* provider of this service to the community through a franchise previously provided by the County, County X plans to agree that the money so needed can be raised by charging *all its present customers* (not only the ones who needed the particular previous service) an additional amount for other services provided by Corporation Y.

In the book of Fairness and Justice owned by most citizens of the county who are customers of Corporation Y, I would dare say, this is an unjust and unfair resolution to the situation, especially when the Corporation has financial resources much greater than its customers who are mainly retired citizens.

*To return from the analogy to the real world situation*, the staff of the PSC has recommended that the CIAC imputation to Aloha should only be \$157, 341. "If the entire service availability charge differential of 659,547 were imputed, it would lower the utility's total company equity ratio to 15.70". Is reduction of the equity ratio from 20.45% to 15.70% considered to be a dangerous situation for the survival of the company? Why cannot the \$ 659, 547 which Aloha did not collect, *because of their own act of omission* be amortized over a 5 year period after an initial imputation of \$157,341 for the first year. The guaranteed rate of return that the Aloha receives which is above 10% should be adequate in the low inflationary period of the present time, to absorb this amount. What is the great loss if a Corporation, which is so inept at doing business, is allowed to disappear from the scene? Or is the PSC more willing to prop up a private business venture than make sure that the interests of the citizens are served?

Even if Aloha were to accept the imputation of \$157, 341, about which I have serious doubt given its desire to collect the maximum amount possible from its *residential* customers, where does the PSC foresee sources for collection of the remaining \$502,206? Obviously from the present customers of Aloha who use the wastewater component of Aloha's services! Are they able to absorb these costs? Fairness and Justice demands that a comparison should be made between the ability of Aloha versus that of its customers to make up the lost revenue.

Next is the question of the way the 'discretion' of the PSC is applied in this matter. A judgement has to be made whether the non-collection of the increased impact fee was an inadvertent error or a mistake with a possible motive. The suggestion has been made by Representative Mike Fasano on a number of occasions including the hearing in January 2002 in New Port Richey that the impact fee for new potable water connection be raised from \$130 to \$500. Aloha has always been opposed to this recommendation.

What is the reason? Was it because Aloha was so concerned about the newcomers to its service area who would have to pay this extra cost when he purchases or builds a new house? Or is there some other motive? During the 2002 hearing Aloha presented a very elaborate plan for the extension of its connections to a large number of homes that it claimed would be built in its service area in the future. *This was at a time when it had no documented new sources of water and soon after it had been fined for extraction of underground water beyond the permit limits imposed by SWFMWD.* Is it possible that the reason why Aloha has always been against the increased impact fees for new connections was that it might negatively impact on its desire to extend its services to more homes and businesses within its service area and that increased impact and service availability charges might deter builders from building in its service area?

What was the reaction of Aloha in 2001 during the discussion for raising impact fee for wastewater? Who was at the meeting? Was the Attorney for Aloha who was contacted “on or before March 7, 2002” and reported that “although Aloha had inadvertently failed to file the revised tariff sheet, the utility had been correctly charging the increased service availability charges as approved by Order NO PSC-01-0326-FOF-SU” present at this meeting? Was Mr. Watford who according to the May 13, 2002 letter from Counsel for Aloha contacted him on “approximately April 12, 2002” (apparently taking over a month to respond after the inquiry from PSC staff on March 7, 2002 about the failure to file the tariff sheet) at this meeting? If the counsel and the President of Aloha were both at this meeting when PSC made the recommendation for increased availability charges, *is it reasonable to assume that the failure to file the new tariff sheet was inadvertent?* If one wants to be charitable and accept that it was indeed an inadvertent error, would not the President be *immediately* notified by the Counsel for Aloha about the PSC inquiry (since it was a serious omission) and the President notify PSC that the charges were not collected *at least at the same time* as Aloha filed its Second Revised Sheet No 22.7 on March 11, 2002? If the President notified the Counsel on April 12, 2002, why did the Counsel not contact the PSC before May 13, 2002? It would require an enormous naiveté on my part to accept that these omissions and delays are inadvertent, when Aloha maintains a staff of superb lawyers to plead its case before the PSC and obfuscate every simple answer that customers provide at a hearing, as I saw them do at the hearing in January 2002. Is it possible that the motive that lay behind the omission to file the new tariff sheet, whatever it was materialized itself in the form of a slip when Aloha faced the reality that PSC had ordered it to raise the waster water impact fee from \$206.75 to \$1,650? How does one account for the delays in communication with the PSC on such a serious matter involving more than \$600,000?

To further look into this matter, why was Limited Partners, even assuming the date for initial notification to its general partner claimed by Aloha to be May 16, 2002 be correct, not notified at the same time as other builders? If Aloha was then demanding payment of an additional approximate amount of \$500,000, why did Aloha wait till June 17 to repeat its notification by fax, especially when “Aloha was aware that tenants had signed leases and were waiting to move into the apartments on June 17, 2002”?

The modus operandi of Aloha in this matter requires a great deal of clarification before the PSC should 'diminish and forgive' any of Aloha's financial responsibility. The Staff recommendation seems to be willing to use the letter of the law and statutes in favor of Aloha, while it is not so willing to protect equally all those who have suffered from this act of omission by Aloha. That is why as a *captive customer* of Aloha as a *monopoly sanctioned and maintained by the State of Florida*, I must to object to the Staff recommendations.

As for the relatively minor matter of a fine of \$1,000 for Aloha, it is merely pocket change of 0.0015% enormous amount of \$659,347.00 is taken into account.

Justice is depicted as a blind goddess above the Supreme Court of the United States, not because she is blind to external reality, but because it is a poetic way of depicting the declaration of independence concept that "all men are equal under the law". That such a phrase includes Corporations is an essential emphasis that governmental regulatory agencies should be making at this time. I hope the Public Service Commission of the State of Florida will find itself free to do so.

I thank you once again for listening to me.

New Port Richey

V. Abraham Kurien, M.D.