



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** FEBRUARY 6, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** OFFICE OF THE GENERAL COUNSEL (HOLLEY)  
DIVISION OF ECONOMIC REGULATION (WALDEN)  
DIVISION OF CONSUMER AFFAIRS (LOWERY)

**RE:** DOCKET NO. 020896-WS - PETITION BY CUSTOMERS OF ALOHA  
UTILITIES, INC. FOR DELETION OF PORTION OF TERRITORY IN  
SEVEN SPRINGS AREA IN PASCO COUNTY.

**AGENDA:** 02/18/03 - REGULAR AGENDA - ORAL ARGUMENT HAS NOT BEEN  
REQUESTED; ORAL ARGUMENT MAY BE GRANTED AT THE  
COMMISSION'S DISCRETION

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** RECOMMENDATION SHOULD BE ADDRESSED BY  
COMMISSIONERS JABER, DEASON, BAEZ, AND  
BRADLEY

**FILE NAME AND LOCATION:** S:\PSC\CCA\WP\020896.RCM

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CASE BACKGROUND

Aloha Utilities, Inc. (Aloha or Utilities) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD in this area.

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

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through 11, 2002, and the Commission issued its Final Order No. PSC-02-0593-FOF-WU (Final Order) on April 30, 2002.

On May 28, 2002, Aloha filed its timely Notice of Appeal, and on June 14, 2002, Aloha filed its Motion for Stay. Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, granted in part and denied in part Aloha's Request to Stay the Commission's Final Order.

On July 18, 2002, the Commission received a letter dated July 16, 2002, from V. Abraham Kurien, M.D. (Dr. Kurien), a customer of Aloha, which was accompanied by a petition (Customers' Petition) which had been signed by 1,491 residents from 1,314 households located in a portion of the Seven Springs Service Area of Aloha.

Following the receipt of the above-described letter and petition, this docket was established in order to consider the issues raised in the petition. On September 11, 2002, the Office of Public Counsel (OPC) filed its Notice of Intervention. By Order No. PSC-02-1274-PCO-WS, issued September 18, 2002, OPC's intervention was acknowledged. On September 26, 2002, the Commission received Edward O. Wood's (Mr. Wood) letter dated September 23, 2002, in which he requested that he be listed as an "Official Party of Record." A copy of that letter was forwarded to all the parties, and no response was received. Thus, by Order No. PSC-02-1504-PCO-WS, issued November 4, 2002, Mr. Wood was granted Intervenor status.

On September 5, 2002, Aloha filed its Motion to Dismiss which was accompanied by a Request for Oral Argument. On September 13, 2002, Dr. Kurien filed his Rebuttal to the Motion to Dismiss, and on September 17, 2002, OPC filed its Response to Motion to Dismiss. On November 4, 2002, staff received a letter from Dr. Kurien submitting additional arguments to his Rebuttal to Aloha's Motion to Dismiss. On November 7, 2002, Aloha filed its Motion to Strike.

On November 19, 2002, at its regular Agenda Conference, the Commission unanimously held that the Customers' petition, along with Aloha's Motion to Dismiss, Request for Oral Argument, and the Responses filed thereto, be held in abeyance until the First DCA has rendered an opinion on Aloha's appeal of the Commission's Final Order. Further, the Commission included in its vote a directive that staff file a Motion to Expedite Aloha's Appeal before the First DCA. Order No. PSC-02-1722-PCO-WS was subsequently issued on

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December 9, 2003, memorializing the decision taken by the Commission at its November 19, 2002 Agenda Conference.

On December 18, 2002, the Commission received a letter from Mr. Wood requesting reconsideration of Order No. PSC-02-1722-PCO-WS, and on December 20, 2003, the Commission received a letter from Dr. Kurien, also requesting reconsideration of Order No. PSC-02-1722-PCO-WS. On January 9, 2003, Aloha filed its Response in Opposition to Requested Reconsideration.

This recommendation addresses Mr. Wood's and Dr. Kurien's Requests for Reconsideration and Aloha's Response thereto. The Commission has jurisdiction to consider this matter pursuant to Section 367.121, Florida Statutes, and Rule 25-22.0376, Florida Administrative Code.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Mr. Wood's and Dr. Kurien's Request for Reconsideration of Order No. PSC-02-1722-PCO-WS Holding Customer Petition, Along with Motions and Responses Filed Thereto, in Abeyance Until Resolution of Appeal by First DCA be granted?

**RECOMMENDATION:** No. Since neither party states a point of fact or law that the Commission overlooked or failed to consider in rendering its Order, and neither party seeks reconsideration of the decision by the Commission to hold this docket in abeyance, or of the Commission's decision to order staff to file a motion before the First DCA to expedite Aloha's Appeal, both requests for reconsideration should be denied. (HOLLEY)

**STAFF ANALYSIS:**

**Request for Reconsideration by Mr. Wood**

Mr. Wood's letter seeking reconsideration of Order No. PSC-02-1722-WS, was received by the Commission on December 18, 2002. In his letter, Mr. Wood states that he is seeking reconsideration of the Order because he does not think the Order contains all that the Commission agreed to at the November 19, 2002, Agenda Conference. Specifically, Mr. Wood states:

The Commission agreed to hold the Docket in abeyance. However there were things that the Commission agreed to do that are not in the Order.

1) Aloha Utilities and the Office of Public Counsel were told to petition the District Court to expedite the hearing of the appeal to Docket No. 010503-WU.

2) The Commission agreed that an independent audit of Aloha's processing and methodology should be under taken. Its purpose to determine the level of hydrogen sulfide present in Aloha water, does the Aloha process remove these elements all the time, and is there an excess of chlorine at times and insufficient at other times depending on demand. This is to be unannounced audit over a period of time.

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Mr. Wood further states in his letter that OPC had accepted the responsibility to finance such a study of Aloha's process, and further, that it was,

[r]ecommended and accepted that the parties doing the study would be from one of the major Florida Universities. A person from the University of South Florida was recommended by Dr. A. Kurien. The OPC has been put in touch with this person. If this person was not acceptable then the OPC would look at other universities.

Mr. Wood states that he believes that all of the above was agreed to by the Commission, but not included in Order No. PSC-02-1722-PCO-WS.

#### Dr. Kurien's Request for Reconsideration

The Commission received Dr. Kurien's letter requesting reconsideration of Order No. PSC-02-1722-PCO-WS on December 23, 2002. In his letter, Dr. Kurien states:

I would like to request a reconsideration of this order so as to include a description of the nature of the discussions that took place at the hearing on November 19, 2002 with reference to Docket No. 020896-WS. Specifically I would like included in the order the discussion about an independent scientific audit of Aloha Utilities' processing methodologies and physical facilities requested by me and the permission given by the PSC for the Office of Public Counsel to finance and undertake such an audit by the University of South Florida.

#### Aloha's Response in Opposition to Requested Reconsideration

In its response to the motions for reconsideration, Aloha states that the requests clearly do not properly seek reconsideration of Order No. PSC-02-1722-PCO-WS. Aloha states that the motions merely seek to complain about the content of the Order rather than to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. Aloha further states that the Order accurately reflects the determination of the Commission and should not be reconsidered.

Staff Analysis

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order. See 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. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). 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. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

As stated previously, the subject of the motions for reconsideration, Order No. PSC-02-1722-PCO-WS, memorializes the action taken by the Commission at its November 19, 2002 Agenda Conference. Specifically, the Commission ordered that this docket be held in abeyance until resolution of Aloha's appeal by the First DCA, and also ordered staff to file a Motion to Expedite Aloha's appeal with the First DCA.

In this situation, neither Mr. Wood nor Dr. Kurien is seeking reconsideration of the decision by the Commission to hold this docket in abeyance. Mr. Wood's request for reconsideration states that the directive to file a Motion to Expedite Aloha's appeal with the First DCA is not included in the Order. However, Order No. PSC-02-1722-PCO-WS specifically states, ". . . in an effort to promote the speedy resolution of the matters contained in the Customers' Petition, we hereby direct our staff to file a Motion to Expedite Aloha's Appeal with the First DCA." Further, upon receiving that directive by the Commission, on December 9, 2002, staff filed its Motion to Expedite Aloha's appeal, and on December 13, 2002, the First DCA issued its Order granting the Motion to Expedite Aloha's appeal.

As mentioned previously, this docket was established upon receipt of a petition that had been signed by approximately 1,491 residents from 1,314 households located in a portion of Aloha's Seven Springs Service Area. Both Mr. Wood's and Dr. Kurien's Motions for Reconsideration refer to discussions that occurred at

the Commission's November 19, 2002 Agenda Conference, at which the Commission unanimously voted to hold this docket in abeyance. Specifically, those discussions involved a request included in the customer's petition that an independent audit of Aloha's processing plant and methodology be undertaken.

Mr. Wood's and Dr. Kurien's requests for reconsideration accurately state that in the course of discussions at the November 19, 2002 Agenda Conference, OPC accepted the responsibility to undertake and finance such an audit. Further, the requests for reconsideration accurately describe discussions as to which collegiate body would be best suited to undertake such an audit, as well as discussions as to how OPC would undertake this audit. However, Mr. Wood and Dr. Kurien's requests for reconsideration inaccurately state that this Commission, as a body, agreed that the audit should be undertaken, or that this Commission gave permission to OPC to undertake the audit. In fact, in choosing to hold this docket in abeyance, the Commission specifically stated, ". . . we find that the issues raised in the Customer Petition are inextricably entwined with the Final Order currently on appeal. Further, in the absence of a Commission Motion to relinquish jurisdiction under Rule 9.600(b), Florida Rules of Civil Procedure, our authority to act in the docket is extremely limited."

Staff agrees that the discussions regarding OPC undertaking an independent audit of Aloha's processing plant and methodology referenced in Mr. Wood's and Dr. Kurien's request for reconsideration took place at the November 19, 2002 Agenda Conference. However, staff does not agree that the Commission gave permission to OPC to undertake this audit. Nor does staff believe that the Commission gave any directive to OPC as to how or by whom the independent audit would be conducted. Thus, staff believes that Order No. PSC-02-1722-PCO-WS accurately reflects the determination of the Commission at its November 19, 2002, Agenda Conference. Staff further notes that nothing in Order No. PSC-02-1722-PCO-WS precludes OPC from continuing to undertake an independent audit of Aloha's processing plant and methodology.

Accordingly, staff recommends that both Mr. Wood's and Dr. Kurien's requests for reconsideration be denied, as neither states a point of fact or law that the Commission overlooked or failed to consider in rendering its Order, and neither party seeks reconsideration of the decision by the Commission to hold this docket in abeyance, or of the Commission's decision to order staff to file a motion before the First DCA to expedite Aloha's Appeal.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open pending the outcome of the appeal of the Final Order before the First DCA.  
(HOLLEY)

**STAFF ANALYSIS:** This docket should remain open pending the outcome of the appeal of the Final Order before the First DCA.