

State of Florida



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: SEPTEMBER 18, 2003

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

FROM: OFFICE OF THE GENERAL COUNSEL (HOLLEY, JAEGER)
DIVISION OF ECONOMIC REGULATION (FLETCHER, MERCHANT)

RE: DOCKET NO. 010503-WU - APPLICATION FOR INCREASE IN WATER
RATES FOR SEVEN SPRINGS SYSTEM IN PASCO COUNTY BY ALOHA
UTILITIES, INC.

AGENDA: 9/30/03 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF; ORAL
ARGUMENT NOT REQUESTED, BUT MAY BE ALLOWED AT THE
COMMISSIONERS' DISCRETION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010503.RCM

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

Among other things in its Final Order, the Commission found that the overall quality of service of Aloha was unsatisfactory, and directed Aloha to improve its water treatment system starting with Wells Nos. 8 and 9, and then continuing with all of its wells to implement a treatment process designed to remove at least 98% of

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the hydrogen sulfide in the raw water. The Final Order directed that these improvements to all of Aloha's wells were to be placed into service no later than December 31, 2003. In addition, the Final Order directed Aloha to implement five customer service measures within 120 days from the date of the Final Order.

The utility appealed this decision to the First District Court of Appeal (First DCA), and sought a stay while the decision was under appellate review. By Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, the Commission granted in part and denied in part the utility's Motion for Stay. Specifically, the Commission stayed the setting of a new rate structure, the requirement of interim refunds, and the requirement for certain plant improvements, as discussed above. The directive for Aloha to implement five customers service measures within 120 days from the date of the Final Order was one of the items in the Final Order that was not stayed, and as a result, the Aloha Citizens' Advisory Committee was created and is currently active.

The First DCA affirmed the Commission's Final Order on May 6, 2003, and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA's mandate was issued on June 30, 2003. As a result, the appellate review is complete and all provisions of the Final Order are now effective.

On July 23, 2003, staff received a letter from the Office of Public Counsel (OPC), setting forth both its and the Citizens' Advisory Committee's positions on both the timing of, and the implementation of the improvements as required by the Final Order. On July 29, 2003, Aloha filed its Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU (Motion). Neither OPC nor any of the other parties to this docket filed a response to Aloha's Motion. However, counsel for OPC did advise staff that it stood by its July 23, 2003 letter.

This recommendation addresses whether Aloha's Motion for Extension of Time to Comply with the Commission's Final Order should be granted. The Commission has jurisdiction to consider this matter pursuant to Sections 367.081 and 367.121, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Aloha Utilities, Inc.'s Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU (Final Order) be granted?

RECOMMENDATION: No. Aloha's Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU is premature and should not be granted at this time. (HOLLEY, JAEGER)

STAFF ANALYSIS:

Current Time Frame Mandated by Final Order

The Commission's Final Order issued April 30, 2002, directed Aloha to improve its water treatment system starting with Wells Nos. 8 and 9, and then continuing with all of its wells to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. The Final Order directed that these improvements to all of Aloha's wells were to be placed into service no later than December 31, 2003, which would have given Aloha twenty months from the issuance date of the Final Order to comply with these requirements. However, pursuant to Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, the Commission specifically stayed this requirement of the Final Order pending resolution of Aloha's appeal.

The First DCA affirmed the Commission's Final Order on May 6, 2003, and subsequently denied the utility's Motion for Rehearing on June 12, 2003. Thus, the stay on the Commission's Final Order was effectively lifted as of June 12, 2003. Applying the twenty month compliance period to this date would require Aloha to complete its well improvements by February 12, 2005.

Docket No. 020896-WS

Subsequent to Aloha's appeal of the Commission's Final Order, the Commission received a customer petition which had been signed by approximately 1,491 residents from households located in a portion of the Seven Springs area of Aloha. The Commission established Docket No. 020896-WS in order to address the customers' petition.

Among the various issues raised in the petition, the customers requested that an independent audit of Aloha's processing plant and methodology be conducted. Because the subject of the petition and the issues contained therein were subsumed in the appeal of the Final Order, at its November 19, 2002 Agenda Conference, the Commission unanimously voted to hold the customer petition docket in abeyance. However, during the course of discussions regarding this docket at the Agenda Conference, OPC volunteered to accept the responsibility to undertake and finance an independent audit of Aloha's processing plant and methodology, which was requested by the customers in their petition.

OPC commissioned Dr. Audrey Levine of the University of South Florida to conduct the independent audit, the results of which are expected to be published in the near future. Further, it is staff's understanding that Dr. Levine's audit findings will address the Commission's Final Order directives, including the requirements that Aloha improve its water treatment system starting with Wells Nos. 8 and 9 and then continue with all of its wells, and the implementation of a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water.

Letter from OPC dated July 23, 2003

Commission staff received a letter from OPC dated July 23, 2003, in which OPC set forth its positions and the Citizens' Advisory Committee's positions on the topic of Aloha's intention to seek to have the Commission amend some of the requirements of its Final Order. Specifically, the improvements to Aloha's wells and treatment process as discussed above.

With respect to the deadline for completing all remedial additions to Wells Nos. 8 and 9, OPC states in its letter that the customers want and expect to have a voice in the determination of which changes should be made. Further, until Dr. Levine's audit findings have been completed, the Advisory Committee cannot reach a conclusion as to the proper action that should be taken for Wells Nos. 8 and 9. For these reasons, the Advisory Committee "strongly advises that Aloha refrain from expending any significant amount of funds to reduce hydrogen levels at Wells Nos. 8 and 9, until the Citizens' audit is complete." OPC's letter also states that the Advisory Committee is aware that its position may require that the current deadline be adjusted and therefore has no objection to an adjustment of the deadline date.

Aloha's Motion for Extension of Time to Comply with Commission's Final Order

Aloha filed its Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU on July 29, 2003. In support of its Motion, Aloha states that it has been engaged in extensive discussions with OPC in order to determine whether, through a mutual agreement or alternative course of action, some or all of the costs which would be incurred implementing the directives of the Final Order could be avoided. According to Aloha, these discussions are the primary basis for its request.

Aloha references the independent audit being performed by Dr. Levine, and states that representatives of Aloha, along with its consulting engineer, have met with Dr. Levine on numerous occasions over the last two months, and have discussed various alternative treatment options. Aloha states that it appears quite possible that there can be an agreement reached between OPC and Aloha for some alternative course of action based on Dr. Levine's analysis.

Aloha states that it has informally agreed with OPC that until it is determined whether an agreement for an alternative course of action can be reached, there should be an attempt to avoid the costs that would be incurred by implementing plant improvements as directed by the Final Order. However, Aloha further states that the receipt and analysis of Dr. Levine's report is a necessary condition precedent to any agreement on the part of OPC and Aloha as to what alternative course of action may be taken.

Aloha believes that once Dr. Levine's report is finalized, it will take no longer than one week for OPC and Aloha to analyze the report, and then meet in order to determine whether a reasonable alternative course of action can be mutually recommended by both parties. Aloha further states that if the parties can reach an agreement, they would jointly request that the Commission's Final Order be modified in part to the benefit of Aloha and its customers. Aloha recognizes that the final decision as to whether a proposed modification is appropriate ultimately rests with the Commission.

In further support of its Motion, Aloha states that in order to meet the deadlines currently imposed by the Commission's Final Order, there must be an immediate expenditure of time, energy and money. According to Aloha, OPC agrees that expenditures in the

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interim would be inappropriate until such time as the possible alternatives proposed by Dr. Levine are examined. Moreover, Aloha points to the July 23, 2003 letter received by Commission staff from OPC, proposing that no improvements be undertaken at this time, until the parties have a chance to examine Dr. Levine's report.

Accordingly, Aloha is requesting that the Commission grant a 100-day extension to the deadline mandated by the Commission's Final Order in order to allow further discussions among the parties regarding the treatment plant improvements. Aloha notes that time is of the essence in this situation as to whether Aloha is able to reach an agreement with OPC with respect to the water plant improvements directives contained in the Commission's Final Order. For that reason, Aloha maintains that all discussions of potential alternatives will be completed within 60 days of the date of its Motion (September 29, 2003), at which time, Aloha will file an additional motion reflective of the outcome of its discussions with the Citizens.

Staff Analysis

As stated previously, the stay on the Commission's Final Order was effectively lifted as of June 12, 2003, making the time frame in which to complete the plant improvements February 12, 2005. Because the Commission's Final Order did not include a required start date for the plant improvements, the additional 100 days that Aloha is requesting would be added to the end of deadline, which would make the required completion date May 23, 2005 instead of February 12, 2005.

Staff agrees that OPC and Aloha should continue their discussions in which they are currently engaged, in the hopes that the discussions will result in achieving the goals of the Commission's Final Order, but at a lower cost to the customers and the utility. Aloha itself states that it is in agreement with the conclusion in OPC's July 23, 2003 letter to the Commission, that no improvements should be undertaken at this time until the parties have a chance to analyze Dr. Levine's report and discuss possible agreement on alternative courses of action to those proposed in the Final Order.

However, staff believes that the 100-day extension that Aloha is requesting is premature at this time. The parties agree that no

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improvements should be undertaken until Dr. Levine's report has been analyzed and discussions have been held on possible alternative courses of actions, but staff does not believe that it is necessary to add an additional 100 days to a deadline which is currently 600 days in the future. As Aloha states in its Motion, upon completion of its discussions with OPC, Aloha plans to return to the Commission and request a modification of the Final Order. It is staff's belief that the appropriate time for Aloha to request additional time to comply with the Final Order, if needed, would be at the same time it requests a modification of the Final Order.

For the reasons stated above, staff recommends that the Commission find that Aloha's Motion for Extension of Time to Comply with Order No. PSC-02-0593-FOF-WU is premature, and should not be granted at this time.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open so that the remaining outstanding issues can be resolved. (HOLLEY, JAEGER)

STAFF ANALYSIS: This docket should remain open so that the remaining outstanding issues can be resolved.