

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION
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IN RE: Petition by Customers of)
ALOHA UTILITIES, INC., for deletion of)
portion of territory in Seven Springs) Docket No. 020896-WS
Area in Pasco County, Florida.)

IN RE: Application for increase in water)
rates for Seven Springs System in Pasco)
County by **ALOHA UTILITIES, INC.**) Docket No. 010503-WU

ALOHA UTILITIES, INC.'S
MOTION FOR RECONSIDERATION
OF ORDER PSC-04-0929-PCO-WS
OR, IN THE ALTERNATIVE, MOTION FOR BIFURCATION

Aloha Utilities, Inc. ("Aloha"), by and through undersigned counsel, hereby moves for reconsideration of Order No. PSC-04-0929-PCO-WS or, in the alternative, moves for bifurcation, and in support thereof would state and allege as follows:

1. On September 22, 2004, the Prehearing Officer issued Order No. PSC-04-0929-PCO-WS, consolidating Docket Nos. 010503-WU and 020896-WS.

2. Docket No. 020896-WS is currently set for hearing on the request by certain

CMP _____ customers to delete a portion of territory from Aloha's certificated water territory. Docket
COM 5 No. 010503-WU is currently set for hearing on the request of three customers on certain
CTR _____
ECR _____ issues related to the physical point in Aloha's facilities at which Aloha must meet a
GCL _____
OPC _____ predetermined treatment standard.

3. Rule 28-106.108, Fla.Admin.Code, provides that

(i) if there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consoli-

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dated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

4. Clearly, these dockets are separate matters which do not have identical parties. Only a tiny fraction of Aloha's water service customer base have requested a hearing in Docket No. 010503-WU. As the Order acknowledges, the "two dockets do not involve identical parties". Under Rule 28-106.108, Fla.Admin.Code, consolidated matters must involve either similar issues of law or fact, or identical parties, and then only if it would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of the party. In this case, the "identical parties" factor set forth in the Administrative Code Rule is not met.

5. Likewise, these two dockets do not involve similar issues of law or fact. While a small portion of their subject matter is the same, arguably the subject matter of almost all proceedings pending before the PSC are the same ("utility matters"). That the matters addressed by these two dockets do not involve similar issues of law or fact is self apparent. One docket addresses an issue on a going forward basis and contests the PSC's Proposed Agency Action as to the detailed vagaries of how certain customer's concerns regarding water quality should be addressed. The other docket assumes no such solution will be acceptable or necessary because the water territory in which the very customers who filed the Petition in Docket No. 010503-WU reside will no longer be the water service territory of Aloha. The Petitions not only do not involve similar issues of law or fact, they are actually at odds with each other. Illustrative of the lack of a common issue of law or fact between the two dockets is the list generated by the staff on September 30,

2004 in which 13 preliminary legal and factual issues are listed. It is notable that on the Preliminary List of factual and legal issues numbers 1-12 have absolutely nothing to do with the matters at issue in Docket 010503-WU. Issue 13 of that Preliminary List of Issues, the only remaining issue, has absolutely nothing to do with the issues in Docket No. 020896-WS. Stated simply, an administrative litigation as to whether a certain area should be deleted from Aloha's water certificated territory and an administrative litigation concerning how the water quality concerns of some customers in that same territory may be addressed on a going forward basis do not involve similar issues of law or fact.

6. Consolidation of these two dockets also will not promote the just, speedy and inexpensive resolution of the proceedings. It is very likely to be extremely confusing for witnesses (often the same witnesses) to be testifying about why deletion of a portion of Aloha's water certificated territory should or should not be ordered by the PSC while also addressing the issues which are the subject of Docket No. 010503 (described in Order No. PSC-040929-PCO-WS as "the proposed requirement that Aloha meet the TBW standard as the water leaves Aloha's treatment facilities, as well as the methodology upon which compliance with the TBW standard shall be determined)". Rather than promoting the just, speedy, and inexpensive resolution of both proceedings, consolidation is likely to lead to confusion, compartmentalization in testimony, cross examination, rebuttal and briefs, and a possible final order (in one case or the other) which combines or melds the two matters in a way which the parties could not have reasonably foreseen.

7. The issues in Docket No. 020896-WS are already sufficiently unsettled such that the addition of issues pertinent to an additional docket (Docket No. 010503-WU) which seeks different relief, involves a different fact pattern, and involves different parties, will

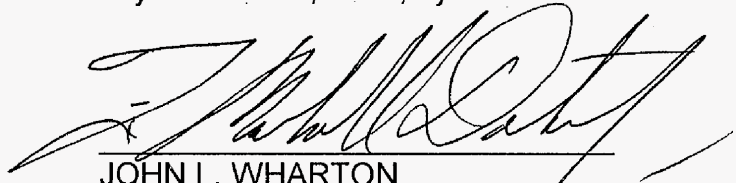
only further confuse the matter. The former docket will involve one of the most important issues ever litigated by the PSC in a water hearing. The latter docket is, for lack of a better phrase, a rather "limited" challenge to a small portion of a PSC's Proposed Agency Action Order such as are involved in quasi-judicial proceedings before the PSC on a regular basis. The prejudice to Aloha, and to the other parties to the proceeding, by the combination of these two dockets, by the confusion of issues and testimony, by the drain of resources, and by the addition of a new case into a hearing which is already scheduled (for a period which may not be sufficiently lengthy for the unconsolidated hearing for which it was established) and the unknown results of the juxtaposition and interplay between the issues in the two dockets in the Staff's Recommendation or the Commission's Final Order, all indicate that the rights of parties to the proceeding will be prejudiced by consolidation and that consolidation will not promote the just, speedy and inexpensive resolution of the two dockets.

7. The Prehearing Officer should reconsider Order No. PSC-040929-PCO-WS or, in the alternative, should grant this Motion to Bifurcate such that the two dockets are unconsolidated and each thereafter should be the subject of its own, separate and distinct administrative litigation. The combining of these dockets merely creates confusion in an ongoing proceeding (Docket No. 020896-WS) in which the issues are so encompassing, the need for testimony and evidence so great, and the actions requested by the Petitioner so unprecedented and drastic, that no other extraneous matters or distractions should be introduced into the record.

WHEREFORE, in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Prehearing Officer reconsider Order No. PSC-04-0929-PCO-WS and

decline to consolidate the respective dockets or, in the alternative, that the Prehearing Officer grant this Motion and bifurcate the cases such that they are no longer consolidated for any purpose.

Respectfully submitted this 4th
day of October, 2004, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or via facsimile (indicated by *) to the following on this 4th day of October, 2004:

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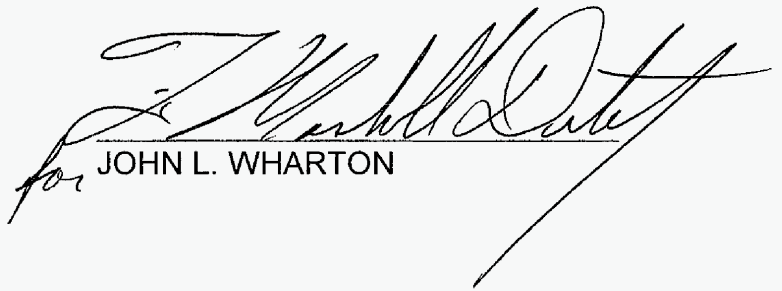
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