

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Florida Public Service Commission,)
Petitioner)
)
v.)
)
Aloha Utilities, Inc.,)
Respondent)

DOCKET No. 050018-WU
ORDER NO. PSC-05-0204-SC-WU

ALOHA UTILITIES, INC.'S MOTION FOR ABATEMENT

Aloha Utilities, Inc. ("Aloha"), by and through the undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Motion for Abatement and in support thereof would state and allege as follows:

1. On March 8, 2005, a formal administrative hearing was held before the Commission in Docket No. 010503-WU. In that proceeding, Aloha participated in an administrative hearing regarding the implementation of measures which the Commission contends are designed to benefit certain customers who have concerns regarding the quality of water in their homes. One issue in that proceeding is whether Aloha should achieve a goal of 0.1 mg/l of hydrogen sulfide by conversion of the same through chemical processes or by removal of the same, assumably by aeration.

2. At that hearing, there was lengthy argument by counsel and discussion between the Commissioners regarding a motion for continuance, made by Aloha. Aloha's motion asserted that the concurrent pendency of Docket No. 010503-WU and this case would create a plethora of problematic issues, and that the only logical and rational way to proceed would be to abate either one case or the other.

3. In this case (hereafter referred to as the “Show Cause” proceeding), the very neighborhoods the Commission contends and believes will benefit the most from the implementation of the processes at issue in Docket No. 010503-WU are proposed by the Commission to be deleted. Both of the Petitioners in Docket No. 010503-WU live in a neighborhood which is subject to the Show Cause Order. Accordingly, the Commission may in Docket No. 010503-WU accept the cost intensive recommendations of the Petitioners, only to shortly thereafter litigate whether those same Petitioners should be removed from Aloha’s service area. To proceed to hearing in this case, before the issuance of the Final Order in the hearing just held in Docket No. 010503-WU, would be unreasonable, illogical, and contradictory.

4. There is no practical way for the Commission to render a decision in Docket No. 010503-WU while this case is actively pending. If the Commission elects to order Aloha to remove the hydrogen sulfide, the pendency of the Show Cause proceeding will render the Commission unable to know the costs of such removal; the size, type, or design of any facilities necessary to accomplish such removal; and the rate impact of any such removal. This is because the Show Cause proceeding may affect the number of Aloha’s customers, the neighborhoods which Aloha serves, the facilities through which Aloha’s customers receive service, and other chemical, hydraulic, engineering, rate, legal, and practical issues related to the issue of removal of hydrogen sulfide. Additionally, it may be impossible for Aloha to obtain financing for any facilities to accomplish removal of hydrogen sulfide while the Show Cause proceeding is pending. Likewise, how can the Commission and the parties proceed with the Show Cause case if no Final

Order has been rendered in Docket No. 010503-WU. It is incumbent upon the Commissioners to only consider the evidence of record in deciding each case. However, it would be practically irrational (although still improper) for a Commissioner to rule upon a case in the Show Cause proceeding without some consideration for the outcome, or possible outcome, of Docket No. 010503-WU, and vice versa. The Prehearing Officer himself, as well as other Commissioners, expressed his trepidation regarding the contemporaneous pendency of these two proceedings. It is a simple fact that these two cases are inextricably intertwined.

5. If the Commission issues an Order to accomplish compliance with the goal of 0.1 mg/l of hydrogen sulfide by conversion, then many of the issues upon which this abatement are requested will be resolved by such order, at least as they relate to a need for abatement of this proceeding. However, if the Commission issues an Order directing Aloha to meet the goal through removal of hydrogen sulfide, a plethora of issues will need to be immediately resolved in order for Aloha to comply with the Commission's Order as referenced hereinabove. It is entirely conceivable that the Commission's order in Docket No. 010503-WU will change the dynamics, evidence, position, and very nature of any proposed deletion proceeding.

6. Abatement of this proceeding will not only allow Docket No. 010503-WU to proceed in an orderly, logical, and reasonable fashion, but will also allow the Commission the opportunity to consider its decision in Docket No. 010503-WU in addressing the Show Cause proceeding. It is illogical for the parties to prepare, for discovery to

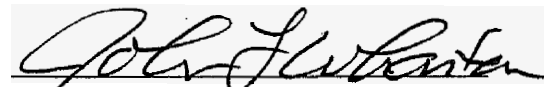
commence, and for positions and issues to be developed and pursued, without knowledge as to the requirements of the Final Order in Docket No. 010503-WU.

7. Abatement of the Show Cause proceeding will also allow Aloha and the Commission and its staff an opportunity to address the issues, whether by mediation or otherwise, raised by the Show Cause Order with the hope of resolving the issues raised therein and the concerns of some of Aloha's customers without formal litigation.

8. Aloha has discussed, in a general fashion, the concepts of abatement or continuance with Commission staff. Staff takes no preliminary position on this request.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Commission abate the Show Cause proceeding until such time as a Final Order is issued in Docket No. 010503-WU. At such time, Aloha should be directed to immediately thereafter confer with staff and to report to the Prehearing Officer the status and posture of these cases, such that the Prehearing Officer may determine whether continued abatement is appropriate or necessary.

Respectfully submitted this 15th
day of March, 2005, by:



JOHN L. WHARTON
FL BAR ID NO. 563099
F. MARSHALL DETERDING
FL BAR ID NO. 515876
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax and U.S. Mail this 15th day of March, 2005, to:

Rosanne Gervasi, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873



JOHN L. WHARTON

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